

**THE ENACTMENT OF RECHARGEABLE RATE OF ELECTRONIC  
MONEY AS A TOOL OF PAYMENT UNDER PERSPECTIVE OF  
FATWA DSN-MUI NO. 116/DSN-MUI/IX/2017 AND MASLAHAH  
THEORY**

**Thesis**

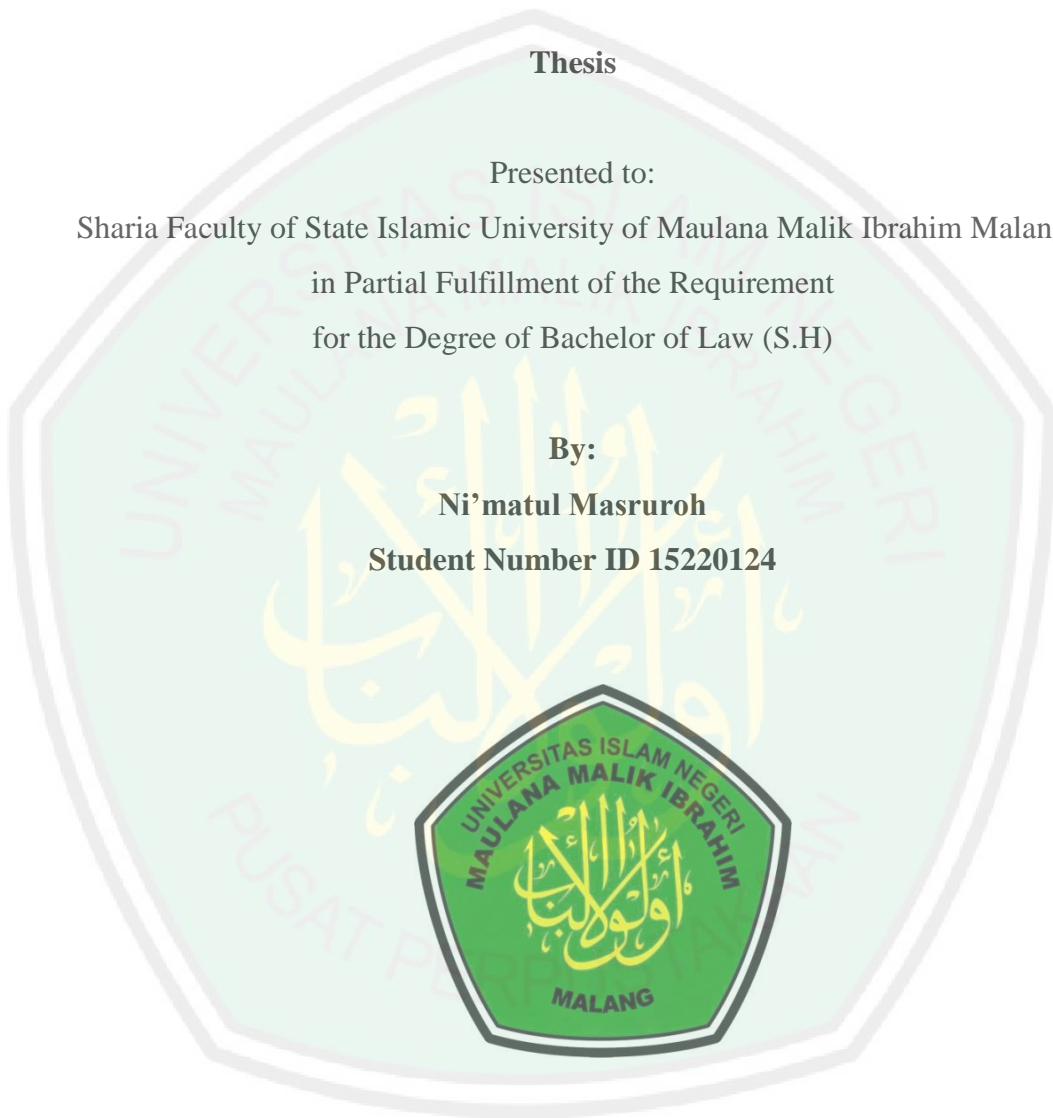
Presented to:

Sharia Faculty of State Islamic University of Maulana Malik Ibrahim Malang  
in Partial Fulfillment of the Requirement  
for the Degree of Bachelor of Law (S.H)

By:

**Ni'matul Masruroh**

**Student Number ID 15220124**



**SHARIA BUSINESS LAW DEPARTMENT  
SHARIA FACULTY  
MAULANA MALIK IBRAHIM  
STATE ISLAMIC UNIVERSITY MALANG**

**2019**

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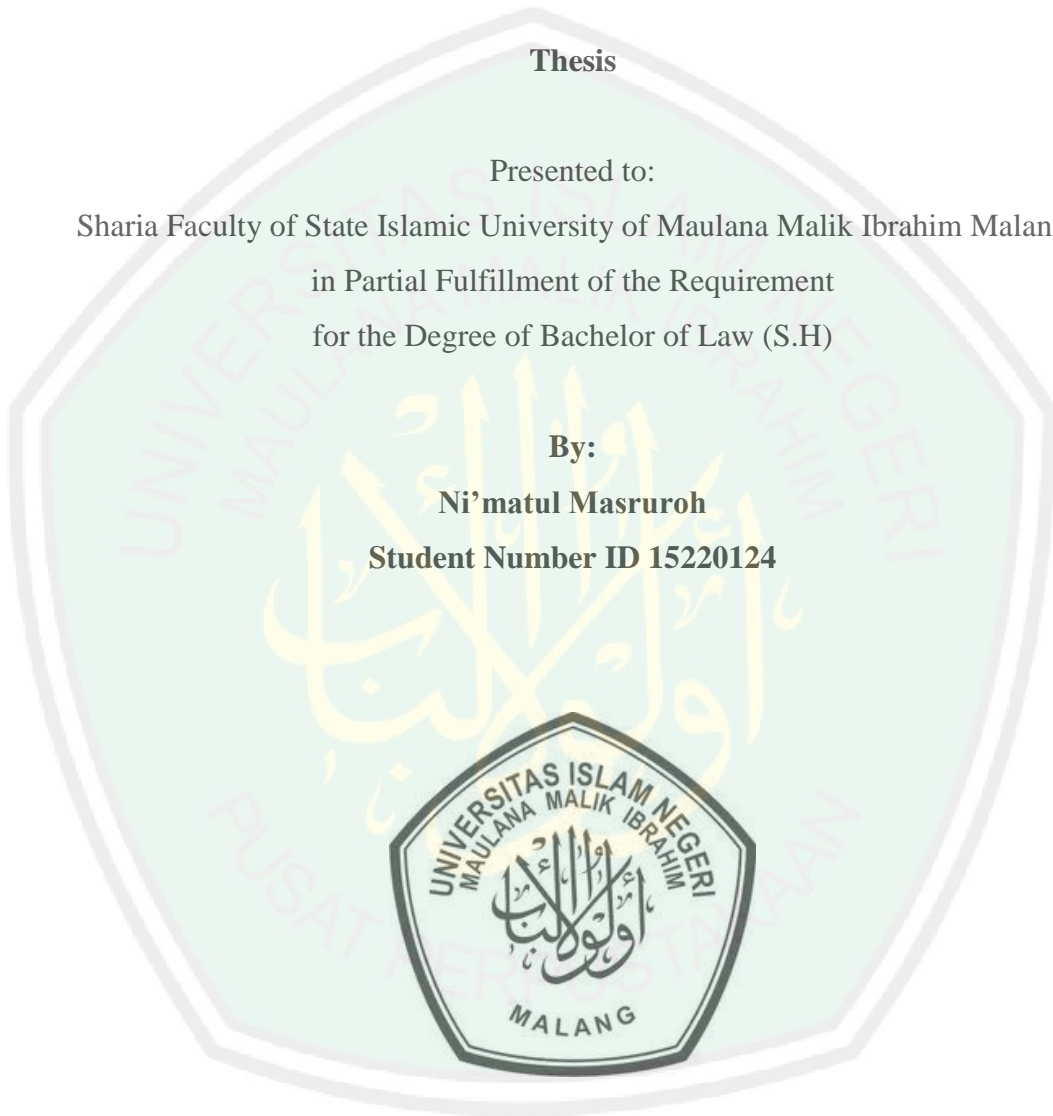
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**SHARIA BUSINESS LAW DEPARTMENT  
SHARIA FACULTY  
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2019**

## STATEMENT OF THE AUTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science,  
the author declares that the thesis entitled:

**THE ENACTMENT OF RECHARGEABLE RATE OF  
ELECTRONIC MONEY AS A TOOL OF PAYMENT UNDER  
PERSPECTIVE OF FATWA DSN-MUI NO/ 116/DSN-MUI/IX/2017 AND  
MASLAHAH THEORY**

Is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, April 29, 2019

Author,



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## APPROVAL SHEET

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**THE ENACTMENT OF RECHARGEABLE RATE OF  
ELECTRONIC MONEY AS A TOOL OF PAYMENT UNDER  
PERSPECTIVE OF FATWA DSN-MUI NO/ 116/DSN-MUI/IX/2017 AND  
MASLAHAH THEORY**

The advisor state that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, April 30<sup>th</sup>, 2019

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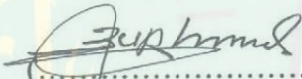
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## MOTTO

أطلب العلم من المهد إلى اللحد

*“Demand the knowledge from the cradle to the grave”*



## ACKNOWLEDGMENT

All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “The Enactment of Rechargeable Rate of Electronic Money as a Tool of Payment Islamic Law Review” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amin.

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2. Dr. H. Saifullah, S.H, M.Hum, as the Dean of the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim, Malang.
3. Dr. Fakhruddin, M. H.I., as the head of Sharia Business Law Department of State Islamic University, Maulana Malik Ibrahim, Malang.
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8. Staff of the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim, Malang. The author expresses gratitude for all their support and co-operation during the course of completing this thesis.
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Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim, Malang, it will benefit all readers and the author himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive critics and suggestions for the improvement and betterment of this thesis.

Malang, April 30<sup>th</sup>, 2019

Author

Ni'matul Masruroh

NIM 15220124

## TRANSLITERATION GUIDANCE

### A. General

The transliteration guidance which is used by the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang is the EYD (*Ejaan Yang Disempurnakan*). This usage is based on the Consensus Directive (SKB) from Religious” Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543.b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H

ث	Sy	ء	‘
ص	Sh	ي	Y
ض	DI		

### C. Vocal, Long-pronounce, and Diphtong

In every written Arabic text in the latin form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya’ nisbat* (in association), it cannot represent by “i”, unless it is written as “iy” so as to represent the *ya’ nisbat* at the end. The same goes for sound of a difting, *wawu* and *ya’* after fathah it is written as “aw” da “ay”. Study the following example:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

### D. Ta’ Marbûthah (ة)

*Ta’ marbûthah* is transliterated as “t” if it is in the middle of word, but if it is *Ta’ marbûthah* in the end of word, it transliterated as “h”. For example: الرسالة المدرسة will be *al-risalat li al-mudarrisah*, or in the standing among two words that in the form *mudlaf and mudlafilayh*, is



transliterated as “t” which is enjoined with the previous word, for example

في رحمة الله *fii rahmatillah.*

### **E. Auxiliary Verb and *Lafadh al-Jalalah***

Auxiliary verb “al” (لا) writte with lowercase form, except if it located at the beginning of word, while “al” in *lafadh al-jalalah* wich located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al Bukhâriy said...
2. Al- Bukhâriy explains, in the prologue of his book...
3. *MasyâAllâhkânawamâ lam yasya” lam yakun.*
4. *Billâhi ,,azzawajalla.*

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## ABSTRAK

Ni'matul Masruroh, 15220124. 2019. **Tinjauan hukum Islam terhadap pemberlakuan tariff isi ulang uang elektronik sebagai alat pembayaran.** Skripsi Jurusan Hukum Bisnis Syari'ah Fakultas Syari'ah Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Mohamad Nur Yasin, S.H., M. Ag.

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**Kata kunci:** Uang elektronik, isi ulang uang elektronik, masalah.

Uang elektronik menjadi alat pembayaran yang sah di Indonesia yang telah dipaparkan oleh Bank Indonesia mendukung Gerakan Nasional Non Tunai (GNNT). Uang elektronik memerlukan isi ulang karena saldo yang tersimpan dalam uang elektronik akan berkurang sesuai jumlah nominal transaksi yang telah dilakukan oleh pemegang uang elektronik. Isi ulang (*top up*) uang elektronik terbagi menjadi dua jenis yaitu, pertama, *top up on us* adalah isi ulang uang elektronik melalui kanal pembayaran milik penerbit kartu uang elektronik. Kedua, *top up off us* yaitu isi ulang uang elektronik melalui kanal pembayaran milik penerbit kartu yang berbeda atau melalui acquirer (mitra) yang telah bekerjasama dengan penerbit kartu uang elektronik tersebut. Ketentuan lebih lanjut mengenai mekanisme pengenaan biaya maksimum yang dapat dikenakan penerbit kepada konsumen diatur dengan dikeluarkannya Surat Edaran Bank Indonesia dan Peraturan Anggota Gubernur.

Penelitian ini bertujuan untuk menganalisis argumentasi pemberlakuan tariff isi ulang uang elektronik sebagai alat pembayaran di Indonesia dan tariff isi ulang uang elektronik menurut perspektif hukum Islam.

Jenis penelitian ini adalah penelitian ilmu hukum normatif. Dengan menggunakan pendekatan perundang-undangan, pendekatan perbandingan dan pendekatan konsep. Karakteristik utama penelitian ilmu hukum normative yang digunakan dalam melakukan pengkajian ilmu hukum normative adalah bahan hukum bukan data atau fakta social.

Dalam argumentasi yuridis tidak adanya keselarasan hokum antara Gerakan Nasional Non Tunai (GNNT) dengan pemberlakuan tariff isi ulang yang diatur dalam Peraturan Bank Indonesia. Argumentasi ekonomis penerbit uang elektronik berasumsi bahwa pemberlakuan tariff isi ulang uang elektronik dianggap wajar karena tidak sebanding dengan biaya investasi, dan biaya lainnya yang telah dikeluarkan untuk menunjang efektifitas pemakaian uang elektronik. Sedangkan konsumen dari uang elektronik merasa terbebani atas pemberlakuan tariff isi ulang uang elektronik. Argumentasi sosiologis atas pemberlakuan tariff isi ulang uang elektronik beralasan karena pihak penerbit uang elektronik membutuhkan biaya untuk perawatan dan sewa alat infrastruktur uang elektronik. Pengenaan tariff isi ulang uang elektronik juga disesuaikan dengan jumlah nilai *top up* yang dilakukan oleh konsumen. Menurut hukum islam *top up* e-money diperbolehkan asalkan mengikuti skema transaksi syariah sehingga hak dan kewajiban pihak-pihak tersebut dapat diketahui.



## ABSTRACT

Ni'matul Masruroh, 15220124. 2019. **The enactment of rechargeable rate of electronic money as a tool of payment.** Sharia Business Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University Malang. Advisor: Dr. Mohamad Nur Yasin S.H., M. Ag.

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**Key words:** Electronic money, the rechargeable of electronic money, masalah.

The electronic money was a legitimate payment tool in Indonesia that was presented by Bank Indonesia supported the National Payment Gateway. Electronic money requires the recharge because the balance of electronic money will be run out appropriated with the nominal of holder transaction. Top up of electronic money divided into two kinds, first, top up on us is the rechargeable of electronic money value through the payment of the issuer card of electronic money. Second, top up off us is the rechargeable of electronic money value through the payment belonged to the different issuer of e-money card or by the acquirer who have cooperated with the issuer of e-money card. More explanation about the mechanism of the imposition of the maximum cost that can be recharge to the consumers by the publisher is by the issuing the Circular Letter from Bank Indonesia and the regulation of Circular Letter of Bank Indonesia.

This research aims to analyze the argumentations of the rechargeable of the electronic money as a tool of payment in Indonesia and the rechargeable of electronic money perspective Islamic law.

This type of research is normative legal research. Normative legal research. With the research approach are legislation approach, comparative approach and conceptual approach. The characteristic of normative legal research to explain the law does not support by required data or social facts, because in study of normative only known the legal materials.

On the Juridical arguments there is un harmonization of norm among the National Movement of Noncash by Bank Indonesia with the enactment of rechargeable rate of electronic money for the Regulation of Bank Indonesia. On the economically arguments a publisher of electronic money, the enactment of rechargeable rate of electronic money is not worth than the cost of the investment, and other costs that have been incurred to support the effectiveness of the use of the electronic money. Whereas the societies as a consumers of electronic money felt burned and do not agree with the enactment of rechargeable rate of electronic money. On the sociological arguments the enactment of rechargeable rate of electronic money because of the issuer of electronic money requires a cost for maintenance and rent the infrastructure tools of electronic money. The imposition on the rechargeable of electronic money is also adjusted by the amount of the value of the top up has been done by the consuments. According to the Islamic Law Review the rechargeable reta of electronic money was allowed but must follow the Islamic transaction scheme, so the right and the obligation both of parties can be aware.

## الملخص

نعمة المسرورة، 15220124. 2019. مراجعة الشريعة الاسلامية ضد إنفاذ الرسوم المحدودة القابلة للشحن الأموال الكترونية كوسيلة للدفع. قسم قانون الأعمال الإسلامية، كلية الشريعة، الجامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. المشرف: الدكتور. المجستير. محمد نور يس

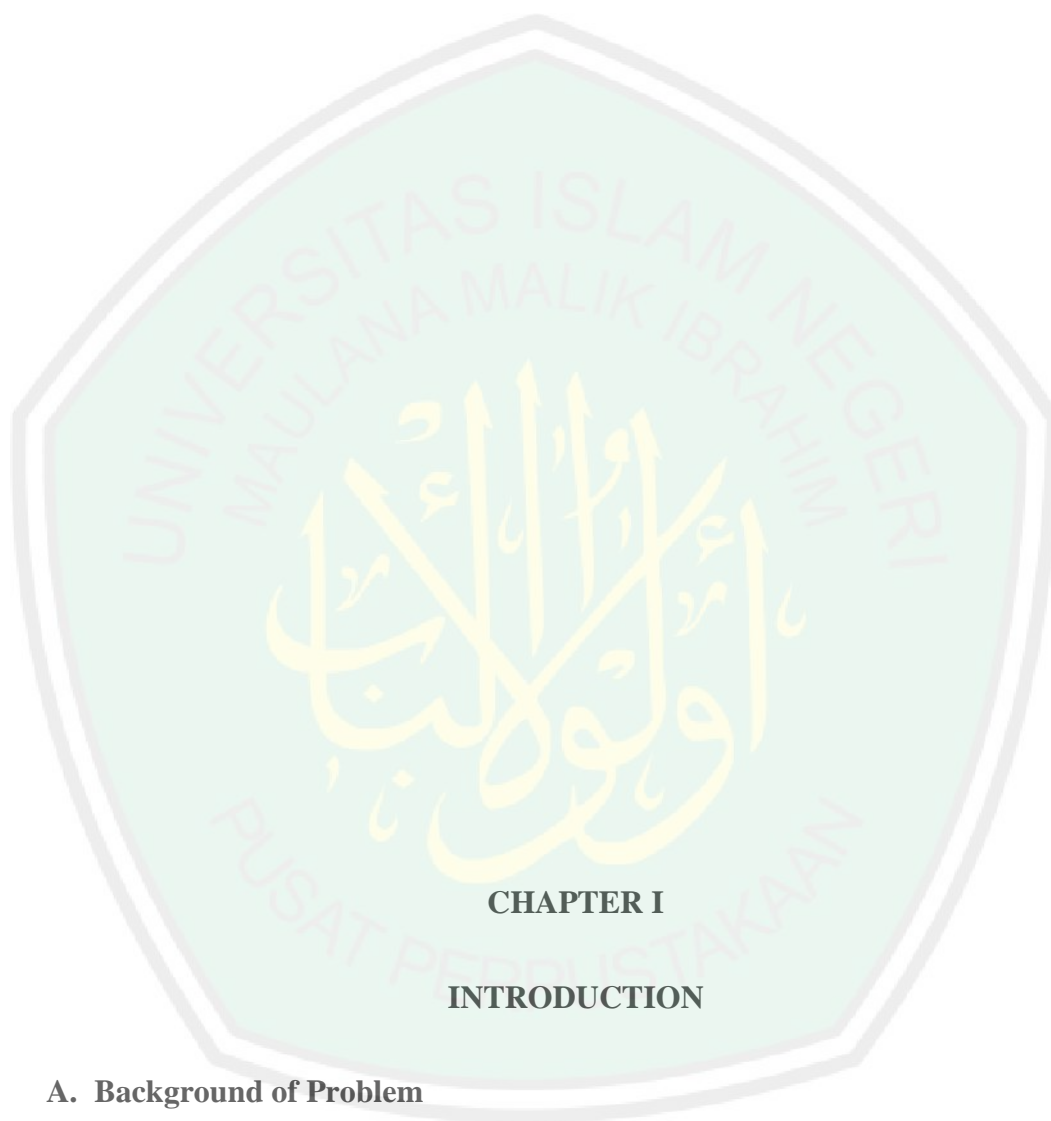
الكلمات الأساسية: النقود الإلكترونية، النقود الإلكترونية القابلة للشحن، المسلحة.

هذه الحالة الأموال الكترونية إلى وسيلة مشروعة للدفع في اندونيسيا التي قدمها بنك اندونيسيا لصالح الحركة الوطنية لغير النقدية. تتطلب الأموال الكترونية أعاده الشحن لان الرصيد الذي يتم تخزينه في الأموال الكترونية سينفذ بعدد المعاملات الاسمية التي ارتكبها صاحب الأموال الكترونية. يتم تقسيم التبعة النقود الكترونية إلى نوعين هما: اعلي علينا هي النقود الكترونية القابلة للشحن من خلال المصدر بطاقة الدفع التي تملكها الأموال الكترونية. بينما اعلي قبالة لنا اي النقود الكترونية القابلة للشحن من خلال الدفع ينتمي إلى مصدر بطاقة مختلفه أو من قبل مستحوذ (الشركاء) الذين تعاونوا مع مصدر البطاقة من النقود الكترونية. ويمكن ان تخضع الاحكام الاضافيه المتعلقة بفرض التكلفة القصوى لالائه لناشري المستهلكين المرتبة بإصدار الرسالة المعممة لمصرف اندونيسيا. بالاضافه إلى الرسالة المعممة للائحة بنك اندونيسيا هو أيضا عضو في الحاكم الذي حدد الرسوم المحددة التي يمكن فرضها علي النقود الكترونية.

يهدف هذا البحث إلى تحليل حجج الاشتراع في الأموال الكترونية القابلة للشحن كوسيلة للدفع في الملء في اندونيسيا وليكترونيك المال وفقا لمنظور الشريعة الاسلاميه.

وهذا النوع من البحوث هو دراسة القانون المعيارى. وباستخدام هذا النهج في التشريعات والنهج المقارن ونهج المفهوم. والخصائص الرئيسية لدراسة القانون المعيارى المستخدمة في اجراء الدراسات المتعلقة بعلم القانون ليست هي البيانات المعيارية للقانون أو الحقائق الاجتماعية.

في غياب الحجج القانونية الانسجام بين قانون الحركة الوطنية لغير النقدية مع سن رسوم مجموعه الملء المنصوص عليها في اللوائح من بنك اندونيسيا. الحجج الاقتصادية الكترونية مصدر المال تفترض ان إنفاذ الرسوم المحددة النقود الكترونية القابلة للشحن تعتبر معقولة لأنها لا تستحق تكلفه الاستثمار ، وغيرها من التكاليف التي تم تكبدها لدعم فعاله استخدام المال الالكترونيات. في حين يشعر المستهلكون من المال الكترونية مثقله لفرض في النقود الكترونية القابلة للشحن. حجه سوسيولوجية لفرض في أعاده شحن معقولة لان المصدر الكتروني المال من النقود الكترونية يتطلب رسما للصيانة وأدوات البنية التحتية استئجار المال الكترونية. كما يتم تعديل الفرض في الأموال الكترونية القابلة لأعاده الشحن بمقدار قيمه الأعلى التي يقوم بها المستهلكون. وفقا للشريعة الاسلاميه يتم السماح بالنقود الكترونية طالما انها تتبع مخطط المعاملات الاسلاميه بحيث حقوق والتزامات الأطراف.



## CHAPTER I

### INTRODUCTION

#### A. Background of Problem

In the lifestyle of human being using the exchange to get somethings they need. Employing of exchange rate has been known since ancient ago, it's known as a barter system. The barter system is carried out by exchange of goods that they have with the items they need. Goods that they use as a tool of exchange also have a value and have a benefits. When someone who need something to wear and eat, they will be looking for the items they have to be

switched with the items they need. From this way the humans can using the barter system to get they need to completed their daily needed. In ancient times the gold and silver were used for exchange because it has a precious value and its status cannot be change until it is in the realm of the hereafter.

Al-Qur'an Surah *Al-Kahf* verse 19 tell us that silver is used as exchange to get the foods they need, which read:

"...فَبِعَثُّوا أَحَدَكُمْ بَورِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ...." (الكهف : 19)

Meaning: "...and then take one of you to go to the town with them silver  
...<sup>1</sup>

Indonesian people also use the exchange to get their needed. Money is a legitimate exchange in the Unitary State of Republic Indonesia of the transaction exchange, because it has intrinsic value. Money is a thing can be accept in generally as the official mean of payment to achieve the obligations. In general, money had three purpose and it is depending on money use. There are the money as a means of exchange for payment transaction between consumers, businesses and Government. Money as a basic assessing of the purchasing or the basic value that can be pay to acquirer the goods and the services. Money as a storage value to read an economic value meter income right now to the dismissal income in future. In article 1 paragraph (2) of Law

<sup>1</sup> Al-Qur'an Surah *Al-Kahf* verse 19



No. 7 Year 2011 About Currency, it is say that the money was a legitimate of payment.<sup>2</sup>

The currency of the Republic Indonesia is the money which spent by the Unitary State of Republic Indonesia and it is called by Rupiah.<sup>3</sup> While in the Bank Indonesia Regulation No. 17/3/PBI/2015 About an Obligation of Use Indonesian Monetary Unit in The Territory of Unitary State of Republic Indonesia article 1 paragraph (1) mentioned that Indonesian Monetary Unit is the currency of Unitary State of Republic Indonesia that applies as a legitimate payment in the Territorial of a Unitary State of Republic Indonesia.<sup>4</sup> Money as a media of exchange is a tool which used by individual to exchange some commodities and services.<sup>5</sup> For the example, someone who has the money and someone who has the rice, in barter system the people who has the money go to market to find the people who has the rice and need the money, until between them occurred the exchange to get something they needed.

From the explanation of the Qur'an verses and the Legislation above, it can be concluded that the means of payment should have value and valuable because it is used as a legitimate payment or legitimate exchange. That exchange can be use in a cash or noncash transaction. Cash transaction is transaction using paper money and/or coins as a payment. Noncash transaction is using tools and mechanisms of unpayment in cash. Noncash transactions

<sup>2</sup> The Legislation of Republic Indonesia Article 1 Paragraph (2) No. 7 Year 2011 about Currency.

<sup>3</sup> The Legislation of Republic Indonesia Article 1 Paragraph (1) No. 7 Year 2011 about Currency.

<sup>4</sup> The Legislation of Bank Indonesia No. 17/3/PBI/2015 about The Obligation of Use Rupiah in the Territory of the Republic Indonesia Unity State.

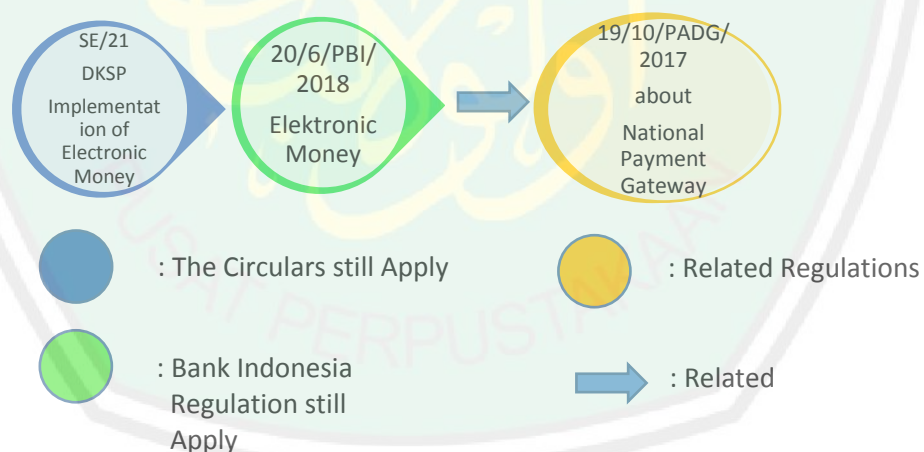
<sup>5</sup> Ahmad Hasan, *Mata Uang Islami (Telaah Komprehensif Sistem Keuangan Islami)*. Jakarta: PT. RajaGrafindo Persada, 2005. Pages. 14.

can be call by electronic transaction. Electronic transaction is an action of law that doing by the subject of law by using a computer, a network of computer and/or the other of electronic media without requiring payment in cash.

Today the payment not only known in the form of paper money or coin as a legitimate payment according to legislation, but we have encountered the presence of electronic money which it has presented by Bank Indonesia supported the National Movement of Non Cash. The regulation of electronic money can be explain below:

### The Record of Electronic Money Trail

Explanation:



The electronic money is an exchange that fulfill the following elements: a) the electronic money published based on the money value has been paid in the advance to the publisher; b) the monetary value stored electronically in a media server or chip; c) the electronic money is used as an exchange to the merchant which not a publisher of electronic money; d) the value of electronic money that managed by the publisher is not a deposit as

stipulated in the legislation of government banking. If equated with paper money and coin, it has intrinsic value and nominal value. Then the electronic money in beginning payment by purchase electronic money card is intrinsic value, and the contents are deposited is nominal value in that electronic money.

Electronic money had some shortcomings and advantages. The shortcoming from the electronic money are electronic money does not come with PIN and owner's identity of electronic money than if the electronic money has been lost or get accidentally exchanged with other people the owner of electronic money difficult to claim to the bank and it through the difficult procedures; when the electronic money is lost, then the money stored in it also lost and who finding the electronic money card can use immediately the card because there is no security in there; the difficulty to checking the balance of the electronic money so the owner of electronic money does not know if the balance of electronic money has run out; the lack of a merchant provide the facilities of electronic money then the electronic money owner difficult to take advantage of electronic money.

While the advantage of electronic money is electronic money can speed up the process of transactions; the owner of electronic money does not need to carry large amounts of money cash; the electronic money is very beneficial for people who are lazy to record the expenses.

The first form of electronic money is debit card.<sup>6</sup> A debit card like a credit card that allows the consumers to purchase a goods and services directly can move funds from the owner's account to the bank electronically to the seller. The debit card can be used in the minimarket which have the electronic machine. With that electronic machine the consumers can do some transaction easily only with just swipe of debit card through a card reader at the cashier, with your account is automatically reduced the value of the purchase transaction that you do.

The second form of electronic money is storage-value card. The way to charging a storage-value card is bought dollars that are paid in advance, this card is similar with prepaid phone card. The modern model of storage-value card is known as a smart card, smart card which contain a computer chip, it can access cash digitally from the owner's account whenever in need. The third form of electronic money is often called by e-cash and used internet signal to buy the goods and services. The consumers can get the e-cash by creating a single account in a bank that has an internet network, so you can have e-cash and it can be transferred to your personal computer. When you want to buy with e-cash, you can browse the shops that exist on the web and press the button "buy" on certain items, then automatically the e-cash transfer of funds of a purchase transaction you do from your computer to the computer

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<sup>6</sup> Frederic S. Mishkin, *Ekonomi Uang, Perbankan, dan Pasar Keuangan*, Jakarta: Salemba Empat, Book 1, Edition 8, pages. 76.



sellers. The seller get the funds transfer from your bank account to the seller account before the goods are shippe.<sup>7</sup>

Based on the data identity of a holder, the electronic money can be divide into two type, there are: a) the data identity of a holder is registered and recorded on the publisher; b) the data identity of a holder is unregistered on the publisher. Based on the data type of the holder identity of the electronic money, the consumers can get the facility from the publisher of electronic money registered, there are: a) holder registration; b) top up; c) payment transaction; d) bill payment; e) transfer of funds; f) cash payment; g) channeling Government assistance programs to the community; h) other facilities based on the approval of Bank Indonesia. While the facilities for the electronic money unregistered are: a) top up; b) payment transactions; c) bill payment; d) other facilities based on the approval of Bank Indonesia.<sup>8</sup>

Top up is the addition of the electronic money value on the electronic money card.<sup>9</sup> Top up of the electronic money divided into two kind, namely top up on us and top up off us. Top up off us is the rechargeable of electronic money value through the payment belonged to the different issuer of e-money card or by the acquirer who have cooperated with the issuer of e-money card. While the top up on us is the rechargeable of electronic money value through the payment of the issuer card of electronic money.

<sup>7</sup> Frederic S. Mishkin, *Ekonomi Uang, Perbankan, dan Pasar Keuangan*, 76.

<sup>8</sup> The Legislation of Bank Indonesia No. 16/8/PBI/2014 about the Changes of the Regulation of Bank Indonesia No. 11/12/PBI/2009 about Electronic Money Article 1 Paragraph (1 A).

<sup>9</sup> The Legislation of Bank Indonesia No. 16/8/PBI/2014 about the Changes of the Regulation of Bank Indonesia No. 11/12/PBI/2009 about Electronic Money Article 1 Paragraph (10).

Bank Indonesia issued that top up of electronic money will worn the cost. With this regulation the electronic money will be commodities are traded by Bank Indonesia. Bank Indonesia regulation that explained about the implementation of the imposition of top up cost to the consumers is the Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money article 52 paragraph 1 (b) and for more explanation about the mechanism of the imposition of the maximum cost that can be recharge to the consumers by the publisher is by the issuing the Circular Letter from Bank Indonesia. In other regulation of Circular Letter of Bank Indonesia there is the regulation of a member of the Board Governors about the rechargeable of electronic money is the regulation of a member of the Board Governors No. 19/10/PADG/2017 about National Payment Gateway section 45 subsection (3) which describes the policy of pricing schemes that can be charge to the card holder of electronic money.

In the Circular Letter of Bank Indonesia Top up of electronic money under Rp. 200.000,00 not charged the cost, whereas above Rp. 200.000,00 will be charged IDR 750,00 at the same bank and will be charged maximum IDR 1.500,00 to 2.000,00 at the other bank. The existence of this regulation gets negative feedback from the community, because they felt aggrieved by the existence cost of top up on electronic money was been applied by Bank Indonesia. In this case, we do not know yet the benefit of the existence regulation reverted to consumers or only revert to the bank.

According to the economic observer Yanuar Rizky said “if we go back to the base theory about money is currency legislation which explained that paper money and coin are legitimate payment in Indonesian State. The National Movement in Non Cash replace the paper money and coin to electronic money, electronic money in term of monetary is equivalent to paper money and coin is the M0. So, electronic money must be equivalent and has no exchange the value.<sup>10</sup> The Regulation of Bank Indonesia No. 16 Year 2014 about changes of the Bank Indonesia Regulation No. 11 Year 2009 about electronic Money explained that the publisher can take a charge of the facilities service to the holder of electronic money, it is described in a section 12A paragraph (2) point b: “the top up through other parties in corporation with the publisher or use the delivery channel of the other parties”. Both of the regulations above are mismatch with the enactment of the regulation that applied in the societies, which Bank Indonesia determined of the cost imposition to the registered holder of the electronic money or to the consumer’s Bank.

Based on the exposure above a researcher take the concluded that there is a contradiction of law or conflict of norm between the regulation of Bank Indonesia No. 16/8/PBI/2014 about changes of the Bank Indonesia Regulation about electronic money article 12 A paragraph (2) point b and the Regulation of the Governor Member No. 19/10/PADG/2017 About National Payment which have set the top us cost of electronic member. A researcher interested in

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<sup>10</sup> <https://youtu.be/U9wuSf1lmEg>, accessed on November 20, 2018 at 21.45 BST.

lifting the title up **“The Enactment of Rechargeable Rate of Electronic Money as a Tool of Payment under Perspective of Fatwa DSN-MUI No. 116/DSN-MUI/IX/2017 and Maslahah Theory”**. The purpose of this research is make the societies as consumers get justice and balance of the benefit from the regulation, they too avoid from the things that inflict the societies in general and consumers in particular.

### **B. Problem Formulation**

Based on the background of problem, it can take some formulation of the problem, including:

1. How the argumentations for the enactment of rechargeable rate of electronic money as a tool of payment in Indonesia?
2. How the validity of the enactment of rechargeable rate of electronic money as a tool of payment in Indonesia under perspective of Fatwa No. 116/DSN-MUI/IX/2017 and maslahah theory?

### **C. Research Objective**

From the formulation of the problems that has found, it can be writing goals, including:

1. To know the argumentations for the enactment of rechargeable rate of electronic money as a tool of payment in Indonesia.
2. To know the validity of enactment of rechargeable rate of electronic money as a tool of payment in Indonesia under perspective of Fatwa No. 116/DSN-MUI/IX/2017 and maslahah theory.



#### **D. Benefit of Research**

From the research objective outline above, this research will provide benefits, both theoretically and practically.

##### **1. Theoretically Benefit**

This research is expect to add insight about theories that related to the matter examined, making these theories as an orientation in the application of practice and can add reference relating to the world education.

##### **2. Practically Benefit**

###### **a) For Author**

1. Add the insights of scientific are related with the academic expertise has been reached.
2. Show the critical thinking to solve the problem accordance to their academic expertise.
3. Show the positive energy in the researcher selves to dig and learn the theories of law, which related with academic expertise.

###### **b) For Educational Institution**

1. Getting donations of new thinking that can enhance the quality and quantity of institutional.
2. Cast a critical thinking cadres of nation in developing quality of institution.
3. Improve the quality of existing human resources in Indonesia.

c) For Science

Add a new references material to improve the quality of education in Indonesia until can to enrich the new insight.

d) For Subsequent Researchers

As an additional reference with a similar discussion that possibility to be better and developed better than the pass.

### E. Operational Definition

For easier to understanding in the study, the following below is a description of operational definition:

1) Electronic money

Electronic money is the payment that fulfill the following element below:

a) published on the basis of the value of money that has been paid in advance by the holder to the publisher; b) the value of the money electronically stored in medium such as a server or chip; c) used as the payment to the merchant that is not publisher of electronic money; d) the value of the electronic money has been paid by holder has been managed by publisher is not a deposit as stipulated in the legislation governing banking.<sup>11</sup>

2) Top up

Top up of cost is a rules of cost pickings the top up an items or services are determined by the provider of goods and services.<sup>12</sup> The top up of

<sup>11</sup> Article 1 Paragraph (3) of the Regulation of Bank Indonesia No. 11 Year 2009 About Electronic Money.

<sup>12</sup> A Large Indonesian Language Dictionary

electronic money is a value adding of the electronic money to the electronic money card.<sup>13</sup>

### 3) Masalah

*Maslahah* is all of the things which are not set by the term of syara' to admit or not admit it, but use it can take some benefits and refused the ugliness.<sup>14</sup>

## F. Research Method

### 1) Type of research

This type of research is normative legal research. Normative legal research has long been used by scientists of law to study the law issues. Normative legal research discusses about the doctrines or principals of science law.<sup>15</sup> In additions this research studies on systematics in law, law sync level, comparative of law and the history of law.<sup>16</sup>

### 2) Research Approach

The research approach used are: first, a legislation approach such as the Act No. 7 Year 2011 about Currency, the regulation of Bank Indonesia, Bank Indonesia Circular Letter, Legal Consumer Protection, the Regulation of a Member of the Board Governors, Fatwa of Islamic Scholars, *Maslahah* theory and other conceptual approaches related to the review of the law about the rate rechargeable of electronic money. Second,

<sup>13</sup> The Legislation of Bank Indonesia No. 16/8/PBI/2014 about Changes of the Legislation of Bank Indonesia No. 11/12/PBI/2009 about Electronic Money Article 1 Paragraph (10).

<sup>14</sup> Muhammad Yusuf Musa, *Al-Mudhal lil Dirosah al-Islam*, Mesir: Dar al-Fikr, t.th, pages. 200

<sup>15</sup> Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2011. pages. 24.

<sup>16</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*. Bandung: Mandar Maju, 2008. pages. 86.

the conceptual approach. This approach was used to formulate the concept of law in order to be used as a reference for the study and analyze the principle of law in the view of a legal expert, in the doctrine, the law and the legislation that relevant with the theme of the electronic money.<sup>17</sup> In normative research or study of normative, the activity to explain the law does not support by required data or social facts, because in study of normative only known the legal materials. So, to explain the law or to found the value of law only used legal concept and the steps taken are normative step.<sup>18</sup>

In this research which became a reference of problem is the Regulation of Bank Indonesia about electronic money, the Regulation of the Governor Member about National Payment Gateway to enactment rate rechargeable of electronic money, Bank Indonesia Circular Letter about the obligation use Rupiah in the territory of a Unitary State of Republic Indonesia there are between these regulation is so contradictive with the trust applied for the welfare of Indonesian societies. Whereas the opinions of the specialist through the news, books, are related to this problem raised.

### 3) Type of Material Law

The main characteristics of the normative legal research used in conducting the study of law not the data or facts, because in the normative

<sup>17</sup> Mohamad Nur Yasin, *Politik Hukum Ekonomi Syariah di Indonesia*. Malang: UIN-Maliki Press, 2018. Pages. 5-6.

<sup>18</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*. Bandung: Mandar Maju, 2008. Pages. 87.



legal research the reviewed of material is the law that contained the normative regulation.<sup>19</sup> The materials of law such as below:

a. Primary Legal Material

The primary legal material is the authoritative material of law, the mean is it has authorities<sup>20</sup> or can be defined by means of legal binding and definitive.<sup>21</sup> The material of law consists the regulation, the official records or in the making of a treatise of legislation such as the academic study required in the making of a legislation and/or local regulations and the judge's decision.<sup>22</sup> In the primary legal material in this research used the regulations such as the Act No. 7 Year 2011 about Currency, the Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money, the Regulation of the Governor Member No. 19/10/PADG/2017 About National Payment, the Act of Consumer Protection No. 8 Year 1999 about Consumer Protection, Fatwa DSN-MUI No 116/DSN-MUI/IX/2017 about Sharia Electronic Money.

b. Secondary Legal Material

Secondary legal material is legal material that gives a description of the primary law materials. Secondary legal material is primarily text book, because the book contains texts about the basic principles of legal science and the classic views of scholars who have high qualification. In addition to the text books, secondary legal

<sup>19</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*. pages. 86.

<sup>20</sup> Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Kencana, Mold 3, 2007. Pages. 141.

<sup>21</sup> Soerdjono Soekamto dan Sri Mamuji, *Penelitian Hukum Normatif Suatu ..... Pages. 13.*

<sup>22</sup> Zainuddin Ali, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2011. pages. 47.

materials can be the form of writings or journals about the law. The writings of law contains about the development or the actual issues of law in the particular field.<sup>23</sup> The secondary legal materials which were used in this research is a literature, journals, books, research of law reports, thesis that discuss about a rate rechargeable of electronic money based on Islamic law.

#### 4) Method of Legal Material Collecting

In the research method of law, the method or ways to collect the data is different with the data collecting method in other science, this differences arises because the different means or understanding of data in law with the means or understanding of data in other sciences. The data which intended in normative research in law is something that found as a legal issues in the structure and materials obtained from positive law of the activities of that related by the materials.<sup>24</sup> The data collecting method in this research is the study of library.

##### a) Study of Library

The researcher solved the problem by searching the theoretical grounding until the research conducted was not only activities of trial and error. This step is the important step because all of the activity of researcher using the study of literature or study of library. Study of library helped researcher in obtaining the information about the

<sup>23</sup> Peter Mahmud Marzuki, *Penelitian Hukum*....Pages. 142-143.

<sup>24</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*...Pages. 166.

research which taken by researcher, as a secondary sources of data and got the problem solving approach.

#### 5) Method of Legal Materials Analysis

After all the required data is collected, then the next step is processing and analysis of data. Processing and analysis of data is a purpose to found the truth that can be used to answer the problems which will be solve by the researcher. Analysis tool used is the interpretation of the law. There are three legal material analysis used in this study, namely: first, the interpretation of the principal, is about understanding the law by looking for the basic suitability of the existing the law. Second, the systematic interpretation, is the estimated the act as a part of the overall legislation by connecting between articles in one legislation or by other legislation or read the explanation. Third, the grammatical interpretation, that capture the sense of the meaning of the legislation of the word.<sup>25</sup>

#### 6) Method of Data Processing

Data processing is usually done through the stage:

##### a) Editing of Data

Editing of data is the examination of data obtained from the completeness, the clarity of meaning, the appropriateness, and the relevance to other groups.

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<sup>25</sup> Mohamad Nur Yasin, *Politik Hukum Ekonomi Syariah di Indonesia...* pages. 6.

b) Coding of Data

Coding of data is give a note or sign to stating the type of data resource and the formulation of the problem.

c) Drafting or Systematization of Data

Drafting or systematization is rearranged the data on regularly, sequential, logical and easy to understanding.

d) Concluding of Data

Concluding is researcher trying to make the conclusion and verification by looking for the meaning of any symptoms that are retrieved from the field, write the regularity and the configuration that may exist, plot of causality phenomenon and proposition.<sup>26</sup>

7) Previous Research

The research that related to the electronic money is not the first time performed. Previously has done some research related to it. In this case I have found some matters that have not been investigated by previous researchers. It can be comparative of the similarities and the differences between previous research.

a. Linda Nur Hasanah Research

About “Kedudukan Hukum Uang Elektronik (E-Money) Dalam Melakukan Transaksi Pembayaran Non Tunai: Analisis Melalui Pendekatan Perundang-Undangan Dan Hukum Islam”. In this research a researcher discussed about the legal position of electronic money in

<sup>26</sup> Bambang Sunggono, *Metode Penelitian Hukum*. (Jakarta: PT Rajagrafindo Persada, 2010), Pages. 125.



payment transaction in Indonesia and how the views of Islamic law about the employing the electronic money in noncash transaction. The similarity between this research and my research that I take is we have used normative legal research by using a legislation and conceptual approach, also we have discussed about electronic money as an alternative of noncash payment. The difference between this research and my research is review of Islamic law for enactment rate rechargeable of electronic money as an alternative payment. I also took the qualitative research.

b. Dewi Handayani Munte Research

About “Analisis Pengaruh Sistem Pembayaran Non Tunai Terhadap Pertumbuhan Ekonomi Indonesia”. In this research a researcher discussed about the influence of the variable money kartal circulating, the influence of quantity of ATM/Debit in Indonesia and the influence of quantity of credit card to Indonesia’s economic growth from quarterly 2009 to quarterly 2014. The similarity of this research is about the system of noncash payment. The difference this research with my research that I took is this research used quantitative description of research, the effect of noncash payment system to the economic development in Indonesia. Whereas the research that I took is focus on the discussion about the enactment rate rechargeable of electronic money and reviews on Islamic law. My research is normative research and qualitative approach.

c. Alam Panuturi Simatupang Research

About “Analisis Faktor Adopsi Penggunaan Uang Elektronik”.

This research is talking about the benchmark of influence employing the electronic money by observing the factors of performance expectancy, effort expectancy, social influence and facilitating conditions through observation of 210 respondents consisting of users and not users of electronic money with a variety of residency, educational and working background. The similarity of this research is about electronic money. The difference between this research and my research is this research used empirical research and the effect of employing electronic money. Whereas my research is about the enactment rate rechargeable of electronic money by using the juridical normative research.

d. Ulul Charisma Research

About “Top Up E-Toll Dalam Perspektif Hukum Ekonomi Islam”. This research discussed about the review of Islamic economic to top up e-toll card and the views from users to additional cost in top up e-toll. The difference this research and my research is this research used empirical research that used data collection of study documentation, interviews and observation, this research also reviewed to Islamic economic of law. The similarity this research with my research that I took is a rechargeable of e-toll which e-toll is an electronic money.

Table 1: The Differences and the Similarities of Previous Research

No	Name/PT/Year	Title	Similarities	Differences
1.	Linda Nur H, Departement of Sharia Business Law, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim Malang, 2018	Kedudukan Hukum Uang Elektronik (E Money) dalam Melakukan Transaksi Pembayaran Non Tunai: Analisis Melalui Pendekatan Perundang-undangan dan Hukum Islam.	The electronic money as an alternative payment, normative research and legislation approach.	The views of Islamic law on the enactment rate rechargeable of electronic money.
2.	Dewi Handayani Munte, Faculty of Economics and Bussiness, University of North Sumatera, 2017.	Analisis Pengaruh Sistem Pembayaran Non Tunai Terhadap Pertumbuhan Ekonomi Indonesia.	The system of Non cash payment.	Qualitative Description of research, the effect of un cash payment to the economic development in Indonesia.
3.	Alam Panuturi Simatupang, Faculty of Economic, Universitu of Gadjah Mada, 2017	Analisis Faktor Adobsi Penggunaan Uang Elektronik	The employment of electronic money.	Empirical research, the factors of employing the electronic money.
4.	Ulul Charisma, Muamalah Depatment, Syariah Faculty of State Islamic Institute, Ponorogo, 2018.	Top Up E-Toll Dalam Perspektif Hukum Ekonomi Islam	The rechargeable on Top-Up E-Toll Card, using the qualitative method.	Empirical research, the data collecting is used study of documentation, interviews and observation, the views in economic Islamic of law.

## 8) Systematic of Writing

For easier the writing, then the researcher need the existence of the systematic research writing, which consist of:

### CHAPTER I INTRODUCTION

This chapter describes the introduction which include: background of problem that taken by researcher, the formulation of problems that included to tree problems, research objective, the benefit of research, operational which explain in a concise material to be excavated, the limitation of research issues and the last is the research method that used in complete the discussion of the research that is being examined.

### CHAPTER II LITERATURE REVIEW

In this chapter explain the theories are used as a reference over the issues that will be solve. The materials used are the literatures or books that discuss about materials needed. Theses to be the one of literature are used to avoid the similarities and plagiarism between one author with other.

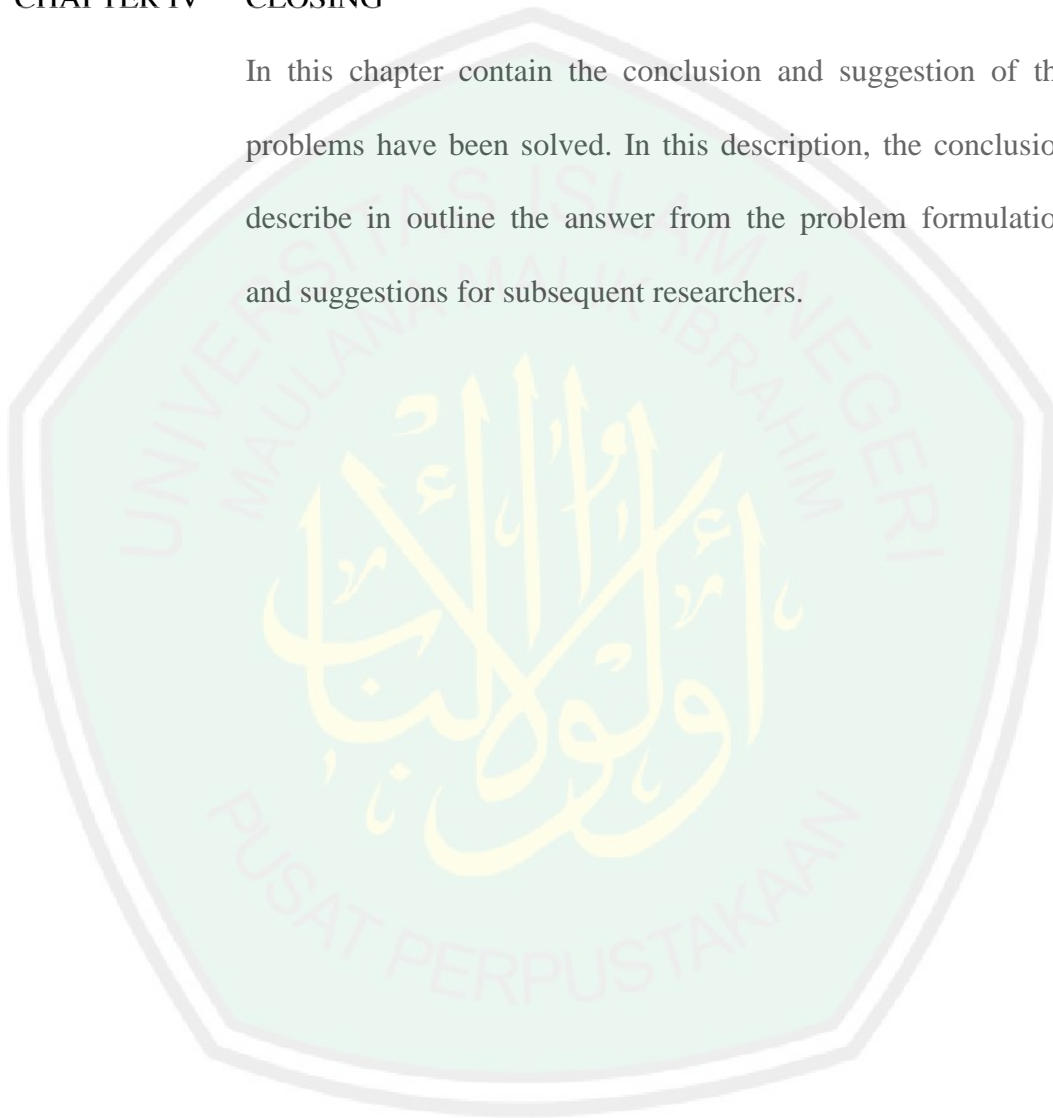
### CHAPTER III DISCUSSION

In this chapter be explained or mentioned the answer of the problem above that be figured out in detail through the data has been collected. In this chapter researcher do the analyze the

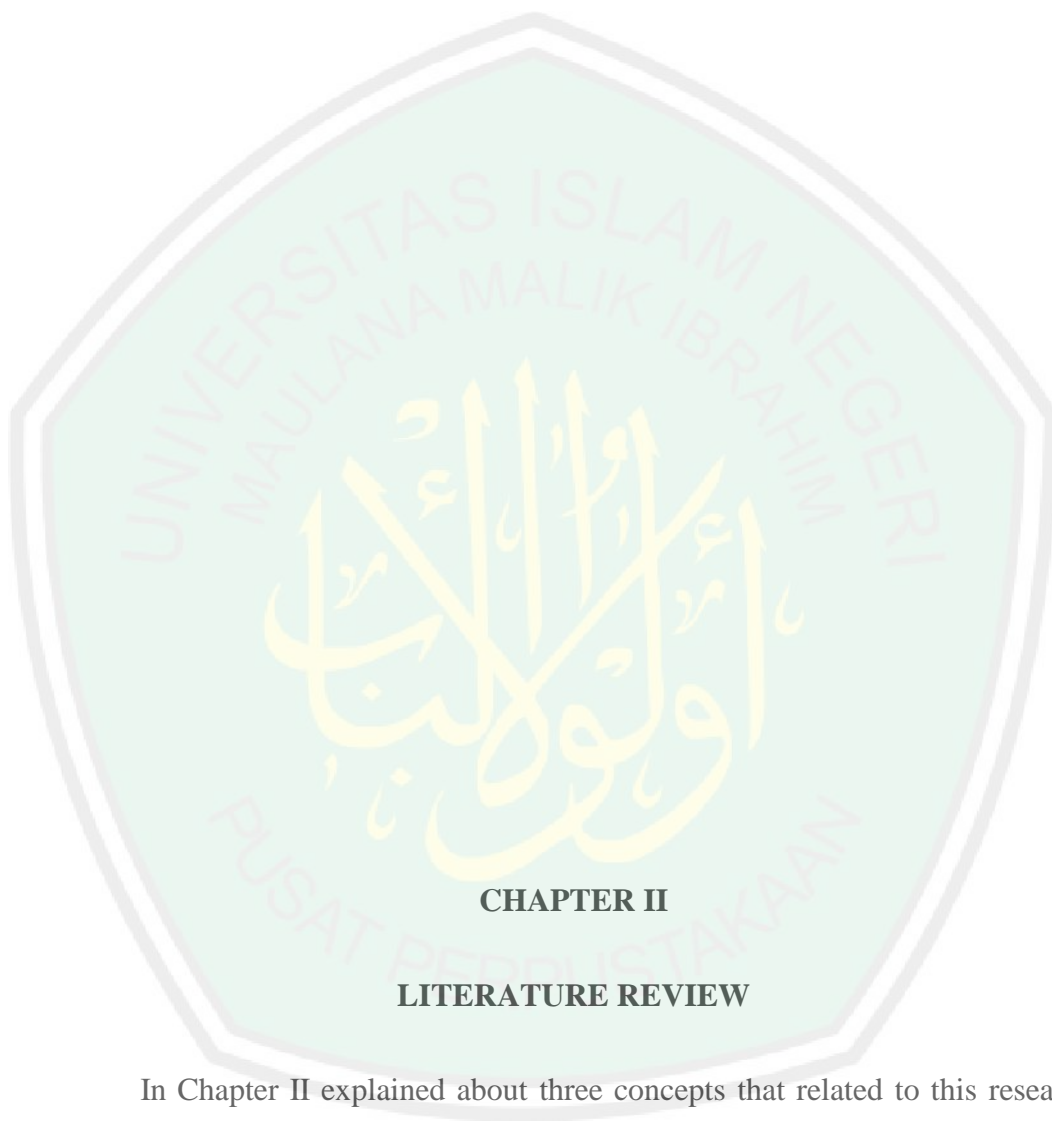
cause of the problems that arise and how to get the solution that can be applied from the problem.

#### CHAPTER IV CLOSING

In this chapter contain the conclusion and suggestion of the problems have been solved. In this description, the conclusion describe in outline the answer from the problem formulation and suggestions for subsequent researchers.







## CHAPTER II

### LITERATURE REVIEW

In Chapter II explained about three concepts that related to this research. First, the concept of money. Second, the concept of electronic money. Third, the concept of maslahah.

#### **A. Money**

##### 1) The Understanding of Money

Money is standard uses of the goods and energies. Therefore, the money is define as something that is used to measure every goods and

energies. For example, the price is the standard of thing or goods and the wage is standard of human. Each other is an estimate of the community to the value of the goods and the human's power. While the stock and other cannot been called as money.<sup>27</sup>

Article 1 paragraph (2) of law No. 7 Year 2011 about Currency, that defining money is as a valid tool of payment. So the money was divided into two kind, there are paper money and coin.<sup>28</sup>

According to Al-Ghazali the definition of money is a goods or object that can be a way to gets other goods or other object. In other word the money is the stuff that was agreed upon as a medium exchange, there objects are considered to have intrinsic value as goods, the value of objects as the money determined with it function as a mean of exchange, in other words something that has a role as the money is the exchange value and nominal value.<sup>29</sup>

## 2) The Essence of Money

In the economic *fiqh* there is the history from Umar *Radhiyallahu 'Anhu* which show that money is everything has been known as a tools of payment in *muamalah* between them.<sup>30</sup>

Electronic money in fact is a money cash without any physical, the money value is become from the money has been paid at the first time to

<sup>27</sup> Taqyuddin An-Nabhani, *Membangun Sistem Ekonomi ALternatif Perspektif Islam*. Surabaya: Risalah Gusti, Mold 7, 2002. Page. 297.

<sup>28</sup> Regulation No 7 Year 2011 About Currency.

<sup>29</sup> Ahmad Dimiyati, *Teori Keuangan Islam: Rekontruksi Metodologis terhadap Teori Keuangan Al-Ghazali*. Yogyakarta: UII Pres, 2018. Page. 59.

<sup>30</sup> Jariban bin Ahmad Al-Haritsi, *Fikih Ekonomi Umar bin Al-Khathab*. Jakarta Timur: KPagesifa (Pustaka AL-Kautsar Grup), Mold 1, 2006. Page. 326-327.

the publisher, then it has been stored electronically in a form of electronic media of a hard drive or chip card, which has the function as a tool of un cash payment to the trader who is not the publisher the electronic money. The value of electronic money is hases the shape of electronic, it can be get by the exchange an amount of cash money or bill debit in a bank then to be save on an electronic in electronic media on the form of store value card. The differences with an ATM card, debit card or bill card is the value money saved in customers account in the bank, whereas in electronic money the value money is saved on the device computer system, phone, prepaid card or chip card. Furthermore, when the holder of the electronic money done some transaction or transfer, the value in the electronic money will be diminish appropriate with the transaction value or transfer like a cash money. On the contrary, the value money in the electronic money can be add up when the holder received a payment or at the time of rechargeable.<sup>31</sup>

### 3) The Type of Money

With the development of the time, the money is developed and evolved following the development of the time. From this development, the money can be categorized into three types, there are:<sup>32</sup>

<sup>31</sup> Rachmadi Usman, *Karakteristik Uang Elektronik Dalam Sistem Pembayaran*. Yuridika: Fakultas Hukum Universitas Airlangga, Volume 32 No. 1, Januari 2017. Page. 140

<sup>32</sup> Mustafa Edwin Budi Setyanto, dkk. *Pengenalan Eksklusif Ekonomi Islam*. Jakarta: Kencana, 3<sup>th</sup> editions, 2010, Pages. 240-242.

#### a) Money Stuff

Money stuff is tool of exchange that has the value of commodities or it can be sold if the goods are not used as the money. But not all of the goods could be money, if the goods will be as the goods of money it is needed three conditions, there are: scarcity, is the goods supplies were to be limited; durability, the item must be durable; the high value of goods, the meaning is the goods are to be as a money must be high value than it does not require the quantity of money when doing the transaction.

In the histories, the employed of money stuff can be categories into items of daily needed. But the money stuff has a lot of weakness because it is hard to be save, split, and difficult to carry away. For the example, the salt when used as the money, this situation did not last long because there is a lot of weakness of the type of the goods was found.

Then the choice of the goods which used as the money is fall to the metal object as the gold and silver. The reason of it is because the gold and silver has a high value, scarce and can be received in all of arena. The gold and silver also did not easy to be shrink or damaged.

#### b) Paper Money

When the coin still used as the legal money in the world, there are some parties who seen the opportunities from the ownership of their gold and silver. These parties are the banks, the people who lend

their money and the goldsmith or the jewelry shop. They see that the evidence of borrowing, saving or storage the gold and silver on their place, it could be received in the market.

Based on this case, a goldsmith and the bank issuing the latter as the paper money with the high value of the gold and silver they have. Because of this paper is supported by the ownership of the gold and silver, the societies received the paper as the exchange of transaction. So, the community acceptability aspect can make the paper money as a legal exchange.

There is the profit of employing the paper money, including: the cost of making is low, the easier of delivery, the addition and the subtraction is easily and quickly, and it can be split into any number of broke. But there is shortage of paper money, including: this paper money is could not be carrying in large quantities because it made of paper which it too easy to damage.

c) Money Giral

Money giral is the money has been issued by commercial bank through expulsion of check and other giro payment tools. Money giral is costumer deposit in the bank, it can be taken at any time and can be transferred to another people for payment. The meaning is the check and giro that issued by an any bank is can be used as a payment of the goods, service, and debt.



The surplus of money giral as a payment are: first, if it lost can be tracked until it could not be chased by unauthorized; second, it can be transferable quickly and at low cost; third, it is not needed the cash back because the check can be written in accordance with the transaction value. But behind the surplus, it has the great danger, then the bank creates the money giral coupled with the bank interest which opened the opportunities of occurrence of the money supply is greater than the real transaction. This is cause of the economic development appearance.

#### 4) The Function of Money

Money has several functions, there are:<sup>33</sup>

- a) The money can be used as a standard the value or as a tool to measure the value, the money can be used to calculated the value in the economy. We can calculate the good's and service value in units of money;
- b) The money can be used as a tool of exchange.

The money is used to pay for the goods or service. The use of money as a means of exchange can drive efficiencies in the economy because it keeps the time necessary in the transaction of the goods and service;<sup>34</sup>

- c) The money can be used as a heaped the wealth up;
- d) The money can be used as a tool of payment in suspend.

<sup>33</sup> Winardi, *Pengantar Ilmu Ekonomi*. Bandung: Tarsito, 1975. Pages 154.

<sup>34</sup> Frederic S. Mishkin, *Ekonomi Uang, Perbankan, dan Pasar Keuangan*. Jakarta: Salemba Empat, 2008, Book 1, Edition 8. Pages. 69.

## 5) The Evolution of the Payment System<sup>35</sup>

The evolution of the payment system is the way that give some enouncement how to do the economic transaction. With the development of the time, the transaction is changed as well with the form of money. Than the payment system has the important meaning to the definition of the money in the future.

### a. Commodity of Money

Commodity of money is the money made from precious metals, such as a gold and a silvers. The commodity of money serves as a commodity exchange in nearly all communities except the primitive societies. The problem is an arise from the payment system in the form of precious metals, it is very heavy and difficult to be carried from one place to another place.

### b. Fiat of Money

Fiat money is a paper money that issued by the Government as a legitimate of payment (the legitimate is mean that paper money can be accepted as a payment for debt) but it is cannot be converted into the form of coins or precious metals. Fiat of money has an advantages with the lighter weight than the coin and precious metals, but the paper money can be accepted as an exchange if there is the credibility of the authority that issued the paper money and printing the paper money get some undergoes an advanced stage and it is very difficult to forge.

<sup>35</sup> Frederic S. Mishkin, *Ekonomi Uang, Perbankan, dan Pasar Keuangan..* Pages. 72-76.

c. Check

Check is the instruction from the owner to the bank to send some money from the owner account to the account of another person when the person is depositing the check. Check allow the occurrence the transaction without having to carry a number of currencies. The discovery of the check is the biggest innovation that can improve the efficiencies of the payment system.

d. Electronically payment

Electronically payment is payment system that provided by the bank and it is just need a little time to enter to the system for pay the bill. The transaction payment is automatically will reduce the balance at the bank. This electronic payment is could be estimated to save more than a dollar every transaction than using the check.

e. E-Money

The first form of e-money is debit card. Debit cards are shaped like a credit card which allow to the consumer to purchase a goods and service directly, it can move the funds electronically from an account in a bank to the seller's account.

## **B. Electronic Money**

### **1) The Understanding of Electronic Money**

Electronic money is the payment which fulfill the following elements below: a) published on the basis of the value of the money has been paid in advance from the holder to the publisher; b) the value of the

money is saved in electronically in the media such as a server or chip; c) it is used as a payment to the trader that is not a publisher of the electronic money; d) the value of the money was deposited by a holder to the publisher is not the saving of the money which mean in the legislation of banking regulation.<sup>36</sup>

Electronic money more known by the societies as a storage card, it is a card has function to save some fund with an amount deposited in advance. The function is same with the debit card, but this storage card is not save the identity of the user or the holder of the card.<sup>37</sup> The understanding of the electronic money according to the Bank for International Settlements is defined:

“stored-value or “prepaid” product in which a record of the fund or “value” available to a consumer is stored on an electronic device in the customer’s possession. The electronic value is purchased by the consumer (for example, in the way that other prepaid instrument such as travelers cheques might be purchases) and is reduced whenever the consumer used the device to make purchases. Traditional electronic payment transaction such as those with debit or credit card typically require online authorization and involve the debiting of the consumer’s bank account after the transaction.”<sup>38</sup>

Base on understanding above, electronic money is the store value or the prepaid where the amount of the money is saved in the electronic media that owned by the consumers. The electronic value purchased by the consumers and saved in them electronic media, where the value of the

<sup>36</sup> Article 1 paragraph (3) Indonesian Banking Regulation No. 11 Year 2009 About Electronic Money.

<sup>37</sup> Haikal Ramadhan, Aminah, dkk. *Perlindungan Hukum Terhadap Pengguna Uang Elektronik dalam Melakukan Transaksi Ditinjau dari Peraturan Bank Indonesia Nomor 16//PBI/2014 Tentang Uang Elektronik (E-Money)*. Jurnal Diponegoro Law Review, Volume 5, Number 2, Year 2016.

<sup>38</sup> Bank for International Settlement, Implication for Central Banks of the Development of Electronic Money (Bank for International Settlement 1996).

money can be reduced if they used to make a payment. Compared to the debit card or credit card is usually required online authorization and involves the debit of bank account after the payment transaction. Otherwise, the management of electronic money does not require online authorization but offline authorization made by a holder of electronic money.<sup>39</sup>

## 2) The Kind of Electronic Money

Based on the storage media, electronic money is distinguished into two kinds, there are:

- a. The value of electronic money in addition to recorder on the electronic media that is managed by the publisher also recorder on the electronic media that is managed by the holder. The electronic media that is managed by the holder can be stored on the chip card, sticker or hard disk on the personal computer belonging to the holder. With the system like this, the payment of transaction using electronic money can be applied on offline mode by reducing directly the value of money.
- b. The value of electronic money in addition to recorder on the electronic media that is only managed by the publisher. In this case the holder got the access right by the publisher to use the value of the electronic money. With this system than the payment of transaction by using the electronic money only can be performed by online where the value of

<sup>39</sup> Rachmadi Usman, *Karakteristik Uang Elektronik dalam Sistem Pembayaran*. Yuridika: Fakultas Hukum Universitas Airlangga, Volume 32 No. 1, January 2017. Pages 138.



electronic money in addition to recorder on the electronic media that managed by publisher will be reduced directly.<sup>40</sup>

Based on the data entry of holder identity, electronic money can be distinguished into two types, namely:

- a. Electronic money of the holder identity data is registered and recorded on the publisher;
- b. Electronic money of the holder identity data is not listed on the publisher or unregistered on the publisher.<sup>41</sup>

### 3) The Range of Users of Electronic Money

Based on the range of users of electronic money are distinguished into:

- a. Single Purpose

Single purpose is the electronic money that used to make payment because of the types of economic transaction, for the example the electronic money only can used for toll payment or the electronic money only can use for public transportation payment.

- b. Multi of Purpose

Multi of purpose is electronic money that used to make a variety of the payment that all of thing a holder did. For the example, the function of electronic money used in several type of transaction such as for payment of toll, can be used to pay for telephone,

<sup>40</sup> Bank Indonesia Regulation Explanation of No. 11/12/PBI/2009 About Electronic Money. Pages 1-2.

<sup>41</sup> Bank Indonesia Regulation No. 16/8/PBI/2014 about Changes of Bank Indonesia Regulation No. 11/12/PBI/2009 about Electronic Money Article 1A Paragraph (1).

transportation service, the payment in the store just enough using one card.<sup>42</sup>

#### 4) The Forms of E-Money

##### a. Debit Card

Debit cards are shaped like a credit card allows the consumer purchase good or service directly can move the funds electronically from an account in a bank to the seller's account. Debit card can use in the place that accept the credit card, and now it is become faster compared to a cash payment.

##### b. Stored-Value Card or Smart Card

The stored-value card is contained a computer chip that can be access by cash digitally from the owner of the account whenever it is needed. The stored-value card can be purchased from a cash machine, personal computer with the reader card of Stored-value card, or the special telephone equipment.

##### c. E-Cash

Costumers get an e-cash by creating a single account at the bank which has the internet network and the bank has e-cash that was transferred to his personal computer. When he wanted to buy something with e-cash, he can browse the shops that exist on the web and press the button "buy" his computer to the computer's seller. The

<sup>42</sup> VietPages Rivai, *Bank Financial Institution Management*. Jakarta: PT. RajaGrafindo Persada, 2001. Pages 137.

seller get funds transferred from the consumer's bank account to the seller's account before the goods are shipped.<sup>43</sup>

#### 5) The Facilities of Electronic Money

Appropriate to the holder identity of electronic money, the publisher give some facilities that can be enjoyed by the holder of electronic money card, including:

##### a. E-Money Registered

The facilities which can be enjoyed by the holder are:

1. The registration by the holders;
2. The top up of electronic money;
3. Paymet transactions;
4. Bill payment;
5. Transfer of funds;
6. Cash;
7. Distribution of the Governmet Assistance programs to the community, and/or;
8. Other facilities based on the Bank Indonesia Approval.

##### b. E-Money Unregistered

The facilities which can be enjoyed by the holder are:

1. Top up of electronic money;
2. Payment transaction;
3. Bill payment;

<sup>43</sup> Frederic S. Mishkin, *Ekonomi Uang, Perbankan, dan Pasar Keuangan..* Pages. 76.

4. Other facilities based on the Bank Indonesia approval.

### C. The Concept of *Maslahah*

#### 1) The Understanding of *Maslahah*

In etymologically, *Maslahah* aqual to the benefits, in the term of pronounciation ot the meaning of it. *Maslahah* also means benefits or a job which contain the benefits. In terminology, there are several definitions of *Maslahah* expressed by the *Usul fiqh* Scholars, but all of the definitions contain the same meaning. *Usul fiqh* Scholars opinion on *Maslahah*, among them:

##### a) Imam Al-Ghazali

Imam Al-Ghazali argued that in the principle of *Maslahah* is taking benefits and refused the ugliness in order to maintain the objectives of shariah. Imam Al-Ghazali looked at the benefits of *Maslahah* must be in line with the objectives of shariah although it is contrary with the goals of human being, because the benefits of human being is not always based on the shariah, but it is often based on them lust. Therefore, the standart which used by Imam Al-Ghazali in determining of Masalahah is the desire and the objective of shariah, rather than the desire and the objective of human being.<sup>44</sup>

In the sense of Masalahah essentially expressing the things that is helpful or get rid of the dangerous things. But it is not the meaning of Masalahah, for seeking benefits or get rid of danger are the

<sup>44</sup> Nasrun Haroen, *Ushul Fiqh*, Jakarta: Logos Wacana Ilmu, 1997, pages. 114

objectives of human being, while the kindness is the achievement of their goals. The meaning of *Maslahah* is undertaken of the objectives of law, which consists of five things, there are: the maintenance of religion, soul, intellect, generation and treasure. All of the things that guarantee the maintenance of the five things are called *Maslahah*. On the contrary, all of things which get rid of the five things is *Mafsadah*. *Mafsadah* can be allay by *Maslahah*.<sup>45</sup>

b) Abdul Wahhab Khalaf

*Maslahah* is the determination of law is not guided by Allah and there is no the argumentation of *syara'* that show the ability and the prohibition of *Maslahah*.<sup>46</sup>

c) Yusuf Musa

*Maslahah* is all of the things which are not set by the term of *syara'* to admit or not admit it, but use it can take some benefits and refused the ugliness.<sup>47</sup>

d) Imam Syafi'i

*Maslahah* as a base of *ekstratektual* reasoning in the context of *al-qiyas* are divided into five categories. First, is a category that has a meaning which can be rationally understood and it is linked with the inevitably *darurah* needs. Secondly, in the matter of the public needs but it was below level of *darurah*. Third, is not be concerned with both

<sup>45</sup> Al-Ghazali, *al-Mustasfa min 'Ilmi al-Usul*, Vol. 1, Beirut: Dar Ihya' al-Turath al-'Arabi, 1993, pages. 286-287

<sup>46</sup> Abdul Wahhab Khalaf, *Ilmu Ushul Fiqh*, Bairut: Darul Qolam, 1971, pages. 84

<sup>47</sup> Muhammad Yusuf Musa, *Al-Mudhal lil Dirosah al-Islam*, Mesir: Dar al-Fikr, t.th, pages. 200



of the matter above, but it is more in connection with the something glorious (*mukarramah*). Fourth, it is similar to the thirth concept but it is a next priority. Fifth, concerning with the ushul which has unclear of the meaning and it was not required by *darurah*, *haajah*, or *mukarramah*.

For the next, from the definitions above, if we put depth attention that can be visible the content of *maslahah* are similar and complemantary to each other, in the sense as well as clarify the nature of the *maslahah*, it can be described as the following below:

1. *Maslahah* is not appointed by the specific proposition about it avowed or not;
2. *Maslahah* must be harmonious and should be in line with the intentions of syara' in the Syariah law;
3. In the realization of *maslahah* must can attract the *maslahah* and reject the *mudarat*;
4. *Maslahah* must be achieved logically and accepted by common sense.<sup>48</sup>

## 2) The Varieties of *Maslahah*

*Ushul fiqhscholars* has posited some division of *maslahah* if it seen from some aspect. In term of quality and interesting of *maslahah*, *ushul fiqhscholars* divided it into three kinds, there are:

<sup>48</sup> Saifudin Zuhri, *Ushul Fiqh (Akal Sebagai Sumber Hukum Islam)*, Yogyakarta: Pustaka Pelajar, 2011, pages. 83-84

a. *Maslahah al-Dharuriyyah*

*Maslahah al-Dharuriyyah* is *Maslahah* associated with the basic necessities of human being in the world and in the hereafter. *Maslahah* in this meaning there are five kinds, namely: the maintenance of religion, soul, intellect, generation and treasure.<sup>49</sup>

b. *Maslahah al-Hajiyah*

*Maslahah al-Hajiyah* is *maslahah* which needed in the perfecting of the *maslahah* basic before in the form of dispensation to defend and preserve the basic necessities of human being. For the example: in the realm of worship were given waivers to abridge the pray (*qashr*) and cancel the fasting for the travelers, in the form of *muamalah* allowed to hunting the animals and eat the good food, ect.<sup>50</sup>

c. *Maslahah al-Tahsiniyyah*

*Maslahah al-Tahsiniyyah* is *Maslahah* that the character is to complementary the discretion and it can be complement the *maslahah* previously. For the example, it is recommended to eat nutritious food, wear good dress, doing the worship *Sunnah* as an extra practice, and the ways to make disappear the defiling filth of the human body.

These three kinds of *maslahah* need to be distinguished, until a muslim can determined the priority in taking a decision of benefit. The *maslahah al-dharuriyyah* must be greater than *maslahah al-hajiyah*

<sup>49</sup> Nasrun Haroen, *Ushul Fiqh*, Jakarta: Logos Wacana Ilmu, 1997, pages. 115

<sup>50</sup> Nasrun Haroen, *Ushul Fiqh*.... pages. 116

because it has the precedence. The *maslahah al-hajiyah* must be greater than *maslahah tahsiniyyah* because it has the precedence.<sup>51</sup>

While in term of womb of *maslahah*, *usul fiqh* scholars divided into two kinds, namely:

a. *Maslahah al-'Ammah*

*Maslahah al-'Ammah* is general of *maslahah* that concern the interests of people. The general of *maslahah* that is not meaning for all of the people interest, but in the form of the majority people's interest. For the example, a scholars allow to kills the disseminator of *bid'ah* which can destroy the people's *'aqeedah*, because it is related to the majority of the people's interest.

b. *Maslahah al-Khashshah*

*Maslahah al-Khashshah* is the personal of *maslahah* and this very rarely happen, as the *maslahah* that related to the termination of a marriage of a person who is declared missing.

The second devision of *maslahah* is related to the *maslahah* which one is in priority and precedence should be between public of *maslahah* or personal of *maslahah*. In this case Islam give precedence to the public of *maslahah* than the personal of *maslahah*.

If we seen in the term of changing or not the *maslahah*, according to Muhammad Mushthafa al-Syalabi, professor of *usul fiqhat* al-Azahar University of Eyp, it is divided into two kinds:

<sup>51</sup> Nasrun Haroen, *Ushul Fiqh*.... pages. 117

a. *Maslahah al-Tsabitah*

*Maslahah al-Tsabitah* is the *maslahah* that has a permanent character, it does not change until the end of time. For the example, the various obligations of worship as a prayer, fasting, zakat and hajj.

b. *Maslahah al-Mutaghayyirah*

*Maslahah al-Mutaghayyirah* is the *maslahah* that can be changeable according to the change of place, time, and subject of law. This *maslahah* is related to the problem's of mu'amalah and custom, as in the matter of the varieties food from the one region to the other. The restriction is needed because according to Mushtafa al-Syalabi it meaning to give the limitation of *maslahah* should be change or does not change.<sup>52</sup>

While in the term of the existence of *maslahah* according to the syariah, it is divided into three kinds, namely:

a. *Maslahah al-Mu'tabarah*

*Maslahah al-Mu'tabarah* is *maslahah* that supported by *syara'*. The meaning is there is a specialist proposition that has been based of the form and the type of *maslahah*. For the example, a punishment for a people who drank the liquor in the *Hadist* of Prophet Muhammad, the different understanding by *usul fiqh* scholars because of the difference

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<sup>52</sup> Nasrun Haroen, *Ushul Fiqh*.... pages. 117

tool beater used by the Prophet Muhammad when executing the punishment for the people who drank the liquor.<sup>53</sup>

b. *Maslahah al-Mulghah*

*Maslahah al-Mulghah* is the *maslahah* that was rejected by *syara'* because it was opposed to the term of *syara'*. For the example, *syara'* determines that the person who had sexual intercourse during the day in Ramadhan got the punishment to absolve a slave, or fasting two consecutive months, or feed 60 poor people<sup>54</sup>. Al-Laits ibn Sa'ad (94-175 H/expert of *Fiqh* Maliki Spanish) set the punishment to fasting two consecutive months for someone (a ruler of Spanish) who had sexual intercourse with his wife during the day in Ramadhan.<sup>55</sup>

Scholars views this law is contradictive with the *Hadist* of Prophet Muhammad above because these forms of punishment must be applied continue. If you are can not be able to absolve the slaves, therefor to the next punishment is to fasting two months. So, the scholars of *usul fiqh* looked that giving priority to the punishment of the fasting two consecutive months than the absolve a slave is contrary with the *syariah* and the rule is void. According to the agreement of Scholars this *maslahah* is called by *maslahah al-mulghah* and this *maslahah* can not be the foundation of law.

<sup>53</sup> Nasrun Haroen, *Ushul Fiqh*.... pages. 118

<sup>54</sup> Narrated by al-Bukhari and Muslim.

<sup>55</sup> Al-Laits ibn Sa'ad (94-175 H/expert of *Fiqh* Maliki Spanish)



c. *Maslahah al-Mursalah*

*Maslahah mursalah* is *maslahah* that the existence is not supported by *syara'* and it also not been rejected by *syara'* with the detaild argumentations. This *maslahah* is divided into two kinds, namely: first, *maslahah al-gharibah* is the strange *maslahah* or the *maslahah* that there is no supported by *syara'* either in detail or general. The scholars of *ushul fiqh* cannot be suggest the example of this kind of *maslahah al-gharibah*. Even Imam al-Syathibi said this kind of *maslahah* is not exist in practice although it is inserted in the theory. Second, *maslahah al-mursalah* is the *maslahah* that not been supported by *syara'* or detail of *nash*, but it is supported by a set of meaning of *nash* or *hadist*.<sup>56</sup>

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<sup>56</sup> Nasrun Haroen, *Ushul Fiqh*.... pages. 119



### CHAPTER III

### DISCUSSION

#### **A. The Argumentations of Enactment Rechargeable Rate of Electronic Money**

The analysis on sub chapter A was grouped into three argumentations. First, the juridical argument. Second, the economically argument. Third, the sociological argument.

##### **1. The Juridical Arguments**

The payment that circulated among the societies today is not only limited with paper money or coin which recognized and legitimated of payment in Unitary State of Republic Indonesia. Bank Indonesia has been inaugurated or regalize the electronic money as one of payment in Indonesia through Bank Indonesia Regulation that supports the National Movement of Noncash. Bank Indonesia Regulation No. 17/3/PBI/2015 About an Obligation of Use Rupiah in The Territory of Unitary State of Republic Indonesia article 3 paragraph (1) mentioned:

“The obligation of use Rupiah in each transaction referred to article 2 paragraph (1) applies to the cash transaction and noncash transaction”.<sup>57</sup>

Cash transaction is the transaction using cash payment. In this case the paper money and coin is used for cash payment. Cash is the commodity that is used by the societies of Indonesia in their transaction. Cash still had an important role in the transactions especially in the small amounts of transaction. Because cash payment is had the easier to use, easier to get, it can not be hijacked, it confidential and always available. So the societies are more inclined to used the cash transaction amid the rise of noncash transaction. Noncash transaction as referred by the Regulation of Bank Indonesia above is included all of the transaction by tools and mechanisms of noncash payment. The explanation of Bank Indonesia Regulation about the obligation of use Rupiah in the Territory of Republic Indonesia concerning the noncash payment can be devided into to ways, first is by using the media such as credit cheque, bilyet giro, and

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<sup>57</sup> Bank Indonesia Regulation No. 17/3/PBI/2015 About an Obligation of Use Rupiah in The Territory of Unitary State of Republic Indonesia article 3 paragraph (1).

wesel. Second, is by using the media cards such as credit cards, debit cards, ATM, and electronic money. Through the Bank Indonesia Regulation, it is known that the electronic money is the legitimated payment in doing the transactions in a Unitary State of Republic Indonesia. Noncash payment started used by societies of Indonesia, it had growth quickly and commonly used in the societies transactions. The Government required the societies of Indonesia ought to move by using the noncash payment. Starting from the payment of toll which required the societies to paid with electronic money, it is often called by electronic toll (e-toll).

But on the other side, the societies which located in the middle to lower level economy prefer to using cash transaction than noncash transaction, because for now a noncash transaction is not familiar with their lives. The Government can not just command the societies to move by using the noncash payment system, because it is make difficult for them which not yet acquainted with the electronic system and the things like it. The Government support of the National Movement of Noncash at least take a moment, so the societies can be adapting them self with this system. Sometimes the time is forcing the societies to keep up the community development, but the societies must pay attention to sort out the things that will be done because it is remains to be seen in the positive side.

The Bank Indonesia Regulation No. 16/8/PBI/2014 about the changes of Bank Indonesia Regulation No. 11/12/PBI/2009 about Electronic Money, mentioned:

“The electronic money is a payment that complied the following elements below:

- a) Published on the basis of the value of money has been paid in advance to the publisher;
- b) Monetary value stored electronically in a server media or chips;
- c) Used for the payment to the merchant that is not the publisher the electronic money;
- d) The value of electronic money which is managed by the publisher is not a deposit as a stipulated in the Government Banking Legislation”.<sup>58</sup>

From the statement above can be drawn the conclusion that electronic money is defined as a payment in electronic form where the value of money is stored in an electronic media. The users of electronic money must pay the money in advance to the publisher of electronic money then the money is stored in the electronic media before the users use for the purposes of the transaction, if the balance of electronic money is runs out the users can fill it back by doing the top up system. Electronic media used to store the electronic money value is can be on the form of a chip or a server. Electronic money is defference with a debit card, credit card or the other payment instrument that uses the electronic system. An electronic money in one of the money model that used in an electronic transaction which using the internet network. The transaction using the electronic money involves the use of computer networks such as the internet and digital price storage system.

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<sup>58</sup> Bank Indonesia Regulation No. 16/8/PBI/2014 about the changes of Bank Indonesia Regulation No. 11/12/PBI/2009 about Electronic Money.



The societies can get the electronic money with a way to contact a banking office that already register them institution as an electronic money issuer, such as BCA, BRI, BNI, Bank Permata and Bank Mandiri. If the societies can not register at the bank that have gotten the legality of issuing the electronic money, the societies encompass open account and perform the registration in agencies that have been approved and registred in Bank Indonesia. These agencies are usually in the form of merchant has HP blue logo. Simpler words, the electronic money can be obtained through bank or non bank that circulated in societies at a particular period which had the legality from Bank Indonesia. Some examples of electronic money issued by the institution of the bank or non bank and has gotten the legality of Bank Indonesia is as follow: BNI-Tap Cas, Bank Mandiri E-Money, BCA-Flazz and BRI-Brizzi.

Electronic money had some shortcomings and advantages. The advantage of electronic money is electronic money can speed up the process of transactions; the owner of electronic money does not need to carry large amounts of money cash; the electronic money is very beneficial for people who are lazy to record the expenses. With the enactment of the regulation of electronic money as a payment in Indonesia we got much advantage especially in the term of practicality of doing transaction to the societies. While the advantage of electronic money, it has some shortcoming. The shortcoming from the electronic money are, first, electronic money does not come with PIN and owner's identity of

electronic money than if the electronic money has been lost or get accidentally exchanged with other people the owner of electronic money difficult to claim to the bank and it through the difficult procedures; second, when the electronic money is lost, then the money stored in it also lost and who finding the electronic money card can use immediately the card because there is no security in there; third, the difficulty to checking the balance of the electronic money so the owner of electronic money does not know if the balance of electronic money has run out; fourth, the lack of a merchant provide the facilities of electronic money then the electronic money owner difficult to take advantage of electronic money.

Bank Indonesia Circular Letter No. 18/21/DKSP subject the changes to the Circular Letter of Bank Indonesia No. 16/11/DKSP at 22<sup>nd</sup> July 2014 subject Conducting of Electronic Money chapter X poin B reads:

“In developing mutually connected system referred to poin A, the organizer must:

1. Open the connectivity of electronic money system, so it can be received by the other organizers, at least for the provision of electronic money facilities, such as:
  - a. Transfer of funds;
  - b. Top up;
  - c. Cash payment
2. Provide the readers of electronic money that can be receive by other publisher of electronic money.<sup>59</sup>

To support the development and the provision of electronic money in term of evectiveness, smoothness and provide a boarder benefits to the holder of electronic money in their transactions, then the organizer of

<sup>59</sup> Bank Indonesia Circular Letter No. 18/21/DKSP subject the changes to the Circular Letter of Bank Indonesia No. 16/11/DKSP at 22<sup>nd</sup> July 2014 subject Conducting of Electronic Money chapter X poin B.

electronic money must develop the electronic money system that can be connected with other electronic money providers in processing of transaction carried out by the holder of electronic money. With this kind, the provider of electronic money must open the connections of electronic money system which it can be received by the other electronic money providers. The electronic money connections system explained above can be in terms of a transfer of funds, top up of electronic money, cash payment (a model of electronic money which is equipped with the features of cash payment) and provide the readers of electronic money that can accept the electronic payment through by other publisher of electronic money. In the regulation of electronic money above, the issuer of electronic money is obligated to provide the features and infrastructures as a supporting the use of electronic money system by the holder of electronic money.

To support the effectiveness of the use of electronic money then so the supporting tools of electronic money began to be provided in the various places for give the facilitate to the societies in the use of the electronic money. Electronic money can be used to pay buying and selling through the merchant or stores which on the cashier has been equipped with an electronic device that can read the electronic money. So the electronic money value is automatically reduced accordingly to the total of transactions carried out by the holder of the electronic money.

The Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money article 52 paragraph (1) mentioned:

“In the implementing of electronic money, the publisher can charge a fee, includes:

- a. A cost of purchasing electronic money media at the first time use or the replacement media of electronic money which it was damaged or missed;
- b. The cost of recharging (top up);
- c. The cost of cash payment by another party or channel (top up off us);
- d. The cost of transfers transaction between users of electronic money from the different publisher.<sup>60</sup>

According to the Regulation of Bank Indonesia above that in implementing of electronic money the publisher can charge a fee includes, first, A cost of purchasing electronic money media at the first time use or the replacement media of electronic money which it was damaged or missed; second, The cost of recharging/top up of electronic money; third, The cost of cash payment by another party or channel (top up off us); fourth, The cost of transfers transaction between users of electronic money from the different publisher. Judging from article 52 paragraph (1) poin b explained that the value of electronic money needed to recharging and rechargeable of electronic money will be subject with the cost, because the value of electronic money can be reduced and exhausted because it has used for various payment transactions by a holder of electronic money. Therefore, the holder of electronic money requires to recharge the balance of electronic money. The publisher of electronic money began to impose a withdrawal over the recharging of electronic money by the electronic

<sup>60</sup> The Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money article 52 paragraph (1).

money holder. Other regulation that regulated about the enactment rechargeable of electronic money explained in the Regulation of Bank Indonesia No. 16 year 2014 about changes of Bank Indonesia Regulation No. 11 year 2009 about Electronic Money article 12A paragraph (2) namely:

“The service cost may be imposed by the publisher to the holder as referred in the article (1) include:

- a. A substitute cost of electronic money media for the first time use or a substitute of electronic money media which corrupt or missing;
- b. A cost rechargeable through the other parties in corporation with the publisher or any other party's use of delivery channel;
- c. A cost of cash withdrawals through the other parties in corporation with the publisher or any other party's use of delivery channel;
- d. Administration cost of electronic money which not used within a certain period.<sup>61</sup>

Bank Indonesia has issued the regulation that rechargeable of electronic money will extended the cost. Bank Indonesia regulation above was described about the legality of enforcing the imposition of cost to the consumers over the recharging the electronic money, it is present on the Bank Indonesia Regulation No. 20/6/PBI/2018 about Electronic Money article 52 paragraph 1 poin b. The regulation is explained that the rechargeable of electronic money will be subjected the cost if a consumer or a holder of electronic money doing the recharge on the other publisher or through a third party who has cooperated with the publisher. This way was known as top up off us or recharging the balance of electronic money through cross channel payment. Executive Director of the Communication Department of Bank Indonesia Agusman explained over the maximum

<sup>61</sup> Regulation of Bank Indonesia No. 16 year 2014 about changes of Bank Indonesia Regulation No. 11 year 2009 about Electronic Money article 12A paragraph (2).



limit of determination in rechargeable electronic money through top up off us i.e. IDR 1,500 to organized the structure of the cost variety among a society. For it, the currently publisher has set the maximum limit of cost and they must do the adjustment,” said Agusman in Jakarta, Thursday (21/9/2017). While the Governor of Bank Indonesia, Agus Martowardojo had previously admitted that there are some banks and third parties wearing a pricing scheme rechargeable of electronic money starting from IDR 2,000 untill IDR 6,500. The varicosity of the cost will trigger protests and complaints from consumers.<sup>62</sup> The cost of recharging the electronic money was applied when the consumers recharge the electronic money above IDR 200,000 and when they do the recharge under IDR 200,000 then they not subjected the cost of rechargeable (top up off us).

Further provisions regarding the impositios of the maximum cost mechanism that can be subject by the publisher to the consumers is set in the introduction of the Circulate Letter of Bank Indonesia. The wording of Circulate Letter of Bank Indonesia chapter X about the development and provision of electronic money system that can be connected with other electronic money system, letter B point 1 about rechargeable of electronic money is as follow:

“The publisher of electronic money must:

1. Open the connection of electronic money system, so it can be accepted by the other publisher, less connections for the provision of electronic money facilities such us:
  - a) Transfer of funds;

<sup>62</sup> <https://www.liputan6.com/bisnis/read/3102792/biaya-top-up-uang-elektronik-paling-mahal-rp-1500-ini-alasannya>, accessed on April 2, 2019 at 20.05 BST.

- b) Top up;
- c) Cash Withdrawals.<sup>63</sup>

The Circulate Letter of Bank Indonesia above explained more clearly for the Regulation of Bank Indonesia about the enactment rechargeable of electronic money. With this the enactment rechargeable of electronic money is allowed by legislation upon the issuer of electronic money to the holder of electronic money. In addition to the Circulate Letter of Bank Indonesia there is also the regulation of a member of the Board Governors that regulated about the cost can be subjected for electronic money is set on the Regulation of a Member of the Board Governors No. 19/10/PADG/2017 about National Payment Gateway article 45 paragraph (3) which described about the policy of pricing schemes that can be charge to the holder of electronic money, reads:

“The policy of pricing scheme as referred in paragraph (1) that is used by the organizers of the National Payment Gateway, switching organizers are corporate with the switching institutions. A parties related to the National Payment Gateway in the form:

- a. Sharing infrastructure;
- b. Terminal usage fee (TUF); or
- c. Merchant discount rate (MDR).<sup>64</sup>

The meaning of sharing infrastructure is the investment cost as a replacement for the infrastructure cost that has been issued. Terminal usage fee is the cost has been paid by the publisher to the infrastructure provider for the use of the terminal. Merchant discount rate is a set of cost imposed upon the merchant by the bank. In this case the Bank Indonesia

<sup>63</sup> Circulate Letter of Bank Indonesia chapter X about the development and provision of electronic money system that can be connected with other electronic money system, letter B point 1.

<sup>64</sup> Regulation of a Member of the Board Governors No. 19/10/PADG/2017 about National Payment Gateway article 45 paragraph (3).

give more attention to the rechargeable of electronic money through a different bank or through the third parties, because many of the parties in corporation with the electronic money issuer put the different cost to the rechargeable of electronic money in their channel starting from IDR 1,500 untill IDR 2,000. So, Bank Indonesia made the regulation in accordance to the pricing scheme which describe in the Regulation of a Member of the Board Governors No. 19/10/PADG/2017 about National Payment Gateway, the cost of top up off us is IDR 1,500 if the holder of electronic money recharged the electronic money above IDR 200,000.

The policy on pricing schemes that are listed in the regulation of a Member of Board Governors which regulated about the cost that can be recharge for electronic money was set with consider a principal to motivate the expansion of efficiency, innovation, competition and the service. Bank Indonesia described that the Central Bank has the principle to give priority the the interest of consumer protection in the regulation rechargeable of electronic money. The Regulation of a Member of Board Governors lets the rechargeable of electronic money could be free, if the rechargeable of electronic money under IDR 200,000 through the issuer banking of electronic money (top up on us). While in rechargeable nominal of electronic money above IDR 200,000 will cost you a maximum IDR 750. While the rechargeable of electronic money through the other bank or a third parties (top up off us) then the maximum cost will be charge is IDR 1,500.

The Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money article 52 paragraph (1), reads:

“In implementing of electronic money, the publisher may charge a cost which includes:

- a. The cost of purchasing electronic money media at the first time use or the replacement electronic money media if it is damaged or missing;
- b. Top up;
- c. The cost of cash withdrawal through another party or other channel (off us);
- d. A transfer transaction of fund between users on the electronic money from a different publisher.<sup>65</sup>

The explanation of article 52 paragraph (1) above is the cost of rechargeable which can be subjected included the rechargeable through the payment of the same publisher (on us) or through other party which cooperated with the publisher and/or through any other payment channel (off us). The Regulation of Bank Indonesia given the free cost only for the rechargeable of electronic money until IDR 200,000. While the rechargeable of electronic money on the nominal above the Bank Indonesia put the maximum of cost IDR 750 to the consumers who doing the rechargeable by the way of top up on us. Second, is by the way of top up off us is the rechargeable of the different channel of payment from the different card publisher of electronic money or through the parties who has cooperated with the publisher of electronic money, can be subjected with the maximum cost IDR 1.500 if the rechargeable above IDR 200,000.

The Regulation of Bank Indonesia No. 16/1/PBI/2014 about Consumer Protection of Payment System Service article 7, reads:

<sup>65</sup> The Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money article 52 paragraph (1).

- 1) In the term of the organizers charge the cost to the consumers in the provision of the payment system service, the organizers must determine the rasionable of cost.
- 2) To establish a rasionable of cost, the organizers is obliged to have the costing guideline.<sup>66</sup>

From the Regulation of Bank Indonesia article 7 paragraph (1) explained that the organizers have the power to determine the policy of cost imposition will be worn to the consumers. In the case of the enactment rechargeable of electronic money was supposed to be a publisher competence in any authority of cost they will wear to the consumers. Bank indonesia's position in this case as a reconnaissance activies conducted by a public bank, i.e when there are abuses of rule applies, then Bank Indonesia has the right to give a warning or sanctions to the concerned banking. Bank Indonesia should not have issued the regulation of recharge, because it becomes the authority of an any commercial bank as the issuer of electronic money, according to the Regulation of Bank Indonesia article 7 paragraph (1) which has been explained above. Whereas in article 7 paragraph (2) in this case is no conflict between the law and the fact that occurred in the societies. Because the imposition in rechargeable of electronic money was used the scheme listed on the Regulation of a Member of Board Governors and they already set guidelines in the determination of rechargeable of electronic money that will be recharged to the consumers.

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<sup>66</sup> Regulation of Bank Indonesia No. 16/1/PBI/2014 about Consumer Protection of Payment System Service article 7.



The enactment of Bank Indonesia Regulation if we related it with the consumers right contained in the Consumer Protection Act there are the conflict of norm, i.e with the Consumer Protection Act No. 8 year 1999 about the Consumer Protection article 4 point (b), reads:

“Consumer right are:

- b) The right to choose the goods and/or service as well as get the good and/or service in accordance with the exchange rate and conditions as the promised of the guarantees.<sup>67</sup>

According to the Consumer Protection Act, consumers have the right to obtain the goods/ and/or the services according to the exchange rate and the promised condition. If connected it with the enactment rechargeable of electronic money that charge over the rechargeable of electronic money was conflict or collide with the consumers right which should be accepted by the consumers. In this case, Bank Indonesia should not have issued the regulation of rechargeable of electronic money because at the beginning of the purchase of electronic money card the consumers are already got charged with the purchase of electronic money card. The money has been deposited by the consumers at the beginning of the purchase of electronic money to the publisher is an obligation of the consumers that must be paid to the publisher in exchange of electronic money was they got. The publisher banking of electronic money card reputed has been got the benefit from the previous purchasing the electronic money card. With this, Bank Indonesia should not set the regulation on enactment rechargeable of electronic money. And in the

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<sup>67</sup> Consumer Protection Act No. 8 year 1999 about the Consumer Protection article 4 point (b).

imposition on cost activities should not be regulated by Bank Indonesia, since it became a Public Bank authority as the issuer banking of electronic money.

In other regulation that protect the consumer right is the Consumer Protection Act article 18 paragraph (1) point g, reads:

“Businessman in offering goods and/or service aimed at making the traded prohibited to make or attach the raw clause on any document and/or agreement if it is declared the consumers to be bent down to the regulation in the term of new rules, in addition, intermediate and/or modification of intermediate made unilaterally by the businessman in their consumers when they exploited the service they have been bought.”<sup>68</sup>

The Regulation of a Member of Board Governors No. 19/10/PADG/2017 about National Payment Gateway that strengthen the National Movement of Noncash requires to the societies ought to use the electronic money payment especially in toll gate payment. This regulation has been started at September 2017 and start running effectively until this time. The recharge of electronic money is needed because the balance of electronic money would be reduced in accordance with the transactions carry out by the holder of electronic money. The societies can conduct the rechargeable of electronic money at the issuer banking of the electronic money or through a channels which has corporate with the electronic money issuer. The cost that charged to the consumers when doing recharging was very varied as a replacement of the service that carry out by the businessman. With the imposition of cost variation over the rechargement of electronic money, Bank Indonesia was made efforted in

<sup>68</sup> Consumer Protection Act article 18 paragraph (1) point g.

leveling up in order to be used as a benchmark by the businessman, so the differences in the cost of rechargeable of electronic money does not happen again. But this was contrary with the Consumer Protection Act article 8 paragraph (1) point g. after the establishment of the Regulation of a Member of Board Governors about the National Payment Gateway, the Governments prohibited to make new rules shaped the raw clause which declared the consumers to be bent down to the regulation by the Regulation of Bank Indonesia No. 20/6/PBI/2018 about Electronic Money which regulated about the imposition in rechargeable of electronic money. In the both of regulations above was found the conflict between each other.

According to the juridical arguments that have been presented above, researcher found the unharminization of norm among the National Movement of Noncash by Bank Indonesia with the enactment of rechargeable rate of electronic money for the Regulation of Bank Indonesia No.20/6/PBI/2018 about Electronic Money. Because in the National Movement of Noncash which aims to increase a society's awareness of the use of the noncash instruments, especially in the transactions over their economic activities. The other side also charge the cost of rechargeable over electronic money to the consumers, this leads to less efficiency in encouraging the formation of the National Movement of Noncash.

## 2. The Economically Arguments

The cost of electronic money recharge is varies between one publisher with other publisher or the recharging through a third parties. The recharging of electronic money can be made in a banking or merchant that provided the electronic money recharging service, such as alfamart, indomart or other outlets. In the term of electronic money recharges through a third party, a Chairman of the Association of National Bank Kartika Wirjoatmodjo said his reason is that in the term of electronic money recharges through a third party when subject the cost because of used the infrastructure recharging service providers, while the rechargeable of electronic money in the same banking is not charge, he said at IBEX year 2017 at Tuesday 19/9.<sup>69</sup>

According to the Governor Bank Indonesia Agus Martowardojo the cost of rechargeable of electronic money will be allocated for the provision of infrastructure, one of them is for the provision of top up machine. Besides the regulation of enactment rechargeable of electronic money is given based on certain limitations such as the rechargeable of electronic money at the supermarket or through a third parties, the rechargeable of electronic money in the other bank of the card issuer, the rechargeable of electronic money above a certain amount. Director of Development of Bank Central Asia (BCA) Santoso Liem was explained that the cost of rechargeable of electronic money really isn't worth with

<sup>69</sup> <https://finansial.bisnis.com/read/20170919/90/691281/javascript>, accessed on April 18, 2019 at 23.00 BST.

the investment and maintenance tools reader electronic money at the toll gates and other places. In additions the banking also offer incentives to the shops are cooporated with the bank. Therefore, the imposition of cost rechargeable of electronic money is considered rasionalable.<sup>70</sup>

For the variations that are set by the issuer of electronic money card at the rechargeable of electronic money will be a consideration of the consumers to use the issuer service of electronic money. The societies will be more inclined to use the electronic money at the issuer of electronic money that imposed the cheaper cost than the use of electronic money at the issuer of electronic money that impose the expensive cost. This is will be the healthy competition between the issuer of electronic money card, because each electronic money issuer will be competing by attracted the interest of the consumer with imposing the cheaper cost and achievable. The issuer who imposed the expensive cost indirectly will be eliminated and lose the societie's interest in using them product.

A researcher from the Economics and Business Faculty of University of Indonesia Rizal E. Halim who was a Member of the National Consumer ProtectionAgency argued that the enactment of rechargeable rate of electronic money is not necessary when a holder of electronic money recharging in the issuer of card (on us) regardless of the magnitude. The recharges through a third parties or patners (off us) a maximum cost is

<sup>70</sup> <https://beritagar.id/artikel/berita/mengapa-isi-ulang-uang-elektronik-harus-dikenakan-biaya>, accessed on April 22, 2019 at 21.40 BST.



IDR 1,500 each transactions.<sup>71</sup> For charging by the way off us will generate healthy competition between partners in attracting consumers in using their products. In this case National Noncash Movement will help the economic productivity Nationwide. The keywords of the productivity it was efficiency not vice versa. The enactment rechargeable rate of electronic money with a reason for the cost of investments that need to be resolved should be able to utilized infrastructure system that already runs such as Near Field Communication (NFC).

According to the Coordinating Minister of Economy, Darmin Nasution argued that the determination of cost on a rechargeable of electronic money activities defined by the market mechanisms. As far as the determination of enactment rechargeable of electronic money go well and was accepted by the societies, then the Government is not yet required to perform the regulation.<sup>72</sup>

The Regulation of Bank Indonesia for enactment rechargeable of electronic money was very contradictory with the electronic implementation of the toll road payment which obligated to the consumers to use the electronic money. On other side Bank Indonesia urged the societies to use electronic money as a transaction payment but on other side Bank Indonesia give the burden to consumers in enactment rechargeable of electronic money. Many of societies felt objected to the

<sup>71</sup> <https://www.suara.com/bisnis/2017/09/21/193028/pengamat-pembebanan-biaya-top-up-e-money-tidak-perlu>, accessed on April 23, 2019 at 19.40 BST.

<sup>72</sup> <https://finance.detik.com/moneter/d-3653782/biaya-isi-uang-elektronik-perlu-diatur-ini-kata-darmin>, accessed on April 23, 2019 at 19.40 BST.

enactment rechargeable of electronic money, because most of them only use the electronic money for transportation payment such as train, busway, and toll roads. If the Government wants to support the noncash movement, supposed to provide a discount for a consumer who transact using the electronic money, instead of burdening them with the cost even they want to recharge the electronic money. For now, after the enforced the enactment of the Noncash Payment Movement through the Regulation of a Member of the Board Governors, top up off us has been effective among the societies except top up on us which will be enforced after finishing the provision of electronic money. The enactment rechargeable of electronic money is not get a little negative response from the societies. Rejection of a petition appears related in rechargeable of electronic money written by Yudha addressed to the Governor of Bank Indonesia Agus Marawardojo, President Joko Widodo, and Finance Minister Sri Mulyani Indrawati. In writing that made on 13 September year 2017, Yudha appealed to the societies to asked to the Bank Indonesia to invalidate the rule. Because the rule where incriminating the societies and could hampered the success of the National Movement of Noncash program (GNNT).<sup>73</sup>

From the economical arguments above, the researcher took the conclusion that a banking as a publisher of electronic money, the enactment of rechargeable rate of electronic money is not worth than the cost of the investment, the cost of infrastructure provided, and other costs

<sup>73</sup> <https://kumparan.com/@kumparannews/netizen-buat-petisi-penolakan-biaya-isi-ulang-e-money>, accessed on April 23, 2019 at 19.50 BST.

that have been incurred to support the effectiveness of the use of the electronic money among the people. Whereas the societies as a consumers of electronic money felt burneded and do not agree with the enactment of rechargeable of electronic money, because they assumed that the National Movement of Noncash for the use of electronic money in any economic transactions carried out by the societies that proclaimed the Government should provide comfort and efficiency for the societies, not by giving an additional cost on each rechargeable of electronic money.

### 3. The Sociological Arguments

Electronic money has the stored value where an amount of money value stored in an electronic media belonging to someone. The value of electronic money will be reduced in accordance with the transactions carried out by the holder of electronic money. Electronic money can use for a wide variety of payment. The of electronic money as a payment tool can give easy and speed of transactions without the need to carry cash. Electronic money very easily applied to the transactions whose value is small but has the high frequency such as the payment of transportation, tolls, parking, fast food, ect.

With the National Movement of Noncash which requires a users of toll road to conduct the transaction with the electronic money or often referred as an e-toll gives a positive impact to the traffic jamming that occurs at the toll payment gateway, because the users of toll road can

make payment using the electronic money which simplify and minimize the time in payment transactions.

The use of electronic money for the transactions are more practical in making payment, but the electronic money will be charged over the rechargeable of electronic money carried out by the holder of electronic money. One of the issuer of electronic money, PT. Bank Central Asia (BCA) argueded that the bank as a issuer of electronic money still experiencing losses. Said the Director of BCA, Jahja Atmadja faithful to the detik Finance.<sup>74</sup> This is because the infrastructures tool to supporting the use of electronic money need the treatment regulary and to move the money from the account to the card also requires a cost, thus the issuer of electronic money still felt loss with their electronic money product that they put out.

Bank Indonesia make the regulation that accordance to the pricing scheme described in the Regulation of a Member of the Board Governors No. 19/10/PADG/2017 about National Payment Gateway. Top up off us will be recharged IDR 1,500 when recharging the electronic money above IDR 200,000. While the top up on us will be recharged IDR 750 when recharging the electronic money above IDR 200,000. The enactment of rechargeable calculated from the presentage of the quantity value of the top up has been done by the holder of electronic money. Because until now many societies that do the rechargeable of electronic money under

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<sup>74</sup> DetikFinance, Jum'at (15/9/2017).

IDR 200,000. So, the Director of Bank Indonesia Agusman hope this policy of pricing scheme of rechargeable of electronic money is not damning the societies.<sup>75</sup>

The Executive Director of the Policy Department Head of Payment System Bank Indonesia Eny V. Panggabean said that at lasted Bank Indonesia do not recharge any transactions as well as the rechargeable of electronic money, to encourage the people to using the electronic money for their transactions.<sup>76</sup>

She said: “however, when it turned out the impact is not too big, one of the reasons is the purchase price of a new electronic money card is quite expensive.”<sup>77</sup>

Then Bank Indonesia want to provide balance in the purchase cost of a new electronic money by giving a cost of rechargeable of electronic money. With a cost rechargeable of electronic money then on the other side the purchasing cost of a new electronic money card can be more affordable by the societies.

From the sociological argument above, it was concluded that the enactment of rechargeable rate of electronic money because of the banking as a issuer of electronic money requires a cost for maintenance and rent the infrastructure tools of electronic money. The imposition on the rechargeable of electronic money is also adjusted by the amount of the value of the top up has been done by the holder of electronic money. On

<sup>75</sup> <https://beritagar.id/artikel/berita/tarif-isi-ulang-uang-elektronik-dipatok-maksimal-rp1500>, accessed on April 24, 2019 at 20.10 BST.

<sup>76</sup> <https://www.kaskus.co.id/thread/594911de529a45a95a8b456c/isi-uang-elektronik-bakal-dikenakan-tarif/>, accessed on April 24, 2019 at 20.15 BST.

<sup>77</sup> Kaskus, Selasa (20/6/2017).



the other side Bank Indonesia also made the effort to provide balance on the purchase of a new electronic money card in order to be affordable by the societies with the rechargeable of electronic money. Director of Bank Indonesia hopes the policy assignment in pricing scheme of the rechargeable of electronic money does not burden the societies.

#### **B. The Enactment Rechargeable Rate of Electronic Money under Perspective of Fatwa DSN-MUI and Maslahah Theory**

The rechargeable of electronic money got the pro and contra from the societies. Because Bank Indonesia made a new rule about the rechargeable of electronic money which the goal is to accelerated the implementation of National Noncash Movement. Electronic money gives some benefits to the wearer i.e provide some easier and efficiency to the transactions that was carried out by the holder. But these regulations are getting a lot of negative responses from the societies who refuse the rechargeable of electronic money. It can be a disintencive to the societies, and the enactment rechargeable of electronic money can make a societies reluctant to use the electronic money and went back to using the cash transaction. judging from the views of Islamic Law about the enactment rechargeable of electronic money, we can see on the Islamic Fatwa. This Fatwa was described the law allowed to use electronic money in the transaction as long as it is clean from the prohibited practice in Islam, the wording of Fatwa as following below:

الحمد لله, والصلاة والسلام على رسول الله, وعلى آله وصحبه, أما بعد: فمن ملك شيئاً من

تلك النقود الإلكترونية بوسيلة مشروعية, فلا حرج عليه في الانتفاع بها فيما هو مباح, فقد بينا

في فتوى سابقة أن لعملة الرقمية؟ أو نقود الـإلكترونية عملات في شكل إلكتروني غير الشكل

الورقي, أو المعدني المعتاد

“Whoever has a part of electronic money by the legitimate ways, then why not to use this facility to conduct the allowed transactions. We have already explained on the previous Fatwa that electronic money or digital money can be able to conduct the transaction, it is not in the term of paper money or coin as usual we known”<sup>78</sup>

According to the Fatwa which explained above, the enactment of electronic money was allowed by the Law in Indonesia to conduct the transaction. In additions the contract between the parties of electronic money should be clear and it was not contained the *gharar*, and it must follow the Islamic transaction scheme, so the right and the obligation both of parties can be aware. Because it cannot be denied the similarities from the period to the period and it was developed progression, as well with the payment tools development that used by the humans. To save the effectiveness and the substances of Islamic Law, then the scholars was issued a law which

<sup>78</sup> Fatwa of Islamic Scholars No. 251170.

unregulated in *Nash* of *Al-Qur'an* and *Hadits* about the enactment rechargeable of electronic money as the payment tools in Indonesia.

Between the issuer and the related parties with the electronic money, it is using some contract in the marketing. Because the humans were not escaped from the *muamalah* and *muamalah* was not escaped from the contract. The Fatwa of DSN-MUI No. 116/DSN-MUI/IX/2017 was described the contracts were used by the parties in implementing the electronic money, the word of Fatwa is following below:

“The contracts between the issuer and the parties were used in the implementing the electronic money (the principle, acquirer, merchant), the organizer of clearing, the organizer of finishing are *Ijarah* contract, *Ju'alah* contract, and *Wakalah bi al-Ujrah* contract.

- a. In the term of contract used *Ijarah* contract, then apply the provisions and limitations of the *Ijarah* contract as contained in the DSN-MUI No. 112/DSN-MUI/IX/2017 about *Ijarah* contract.
- b. In the term of contract used *Ju'alah* contract, then apply the provisions and limitations of the *Ju'alah* contract as contained in the DSN-MUI No. 62/DSN-MUI/XII/2017 about *Ju'alah* contract.
- c. In the term of contract used *Wakalah bi al-Ujrah* contract, then apply the provisions and limitations of the *Wakalah bi al-Ujrah* contract as contained in the DSN-MUI No. 113/DSN-MUI/IX/2017 about *Wakalah bi al-Ujrah* contract.<sup>79</sup>

*Ijarah* contract is a leasing contract between *mu'jir* (a giver's rent) and *musta'jir* (a party of rent) or between *musta'jir* with a maker (the party who providing the service in the *Ijarah* contract) for intercharging the benefits and *Ujrah* or *weges*, both of goods benefits or services benefits.<sup>80</sup> In the term of electronic money that the imposition of the cost of rechargeable of electronic

<sup>79</sup> The Fatwa of DSN-MUI No. 116/DSN-MUI/IX/2017 about electronic money of sharia, Chapter III article (2).

<sup>80</sup> Fatwa DSN-MUI No: 112/DSN-MUI/IX/2017 about *Ijarah* Contract. Chapter I point 1.

money obviously does not use the Ijarah contract, because there is no object of contract which becomes the object of lease between two parties.

Ju'alah contract is an agreement or a commitment to deliver specific reward upon the achievement of specified outcomes from such a job.<sup>81</sup> On the electronic money does not use Ju'alah contract between the card issuer of electronic money and/or third parties with the electronic money holders. Then the imposition of rechargeable of electronic money to the holder of electronic money not early mention in the initial agreement.

Wakalah bi al-Ujah contract is a contract accompanied with the reward in the form of ujah. The meaning of tis case is the reward that must be paid over the service conducted by the deputy or the party that received a power. In the Fatwa of DSN-MUI No. 113/DSN-MUI/IX/2017 related provisions of ujah is as follow below:

1. The shapes of a ujah can be the money or goods that may be utilized according to Sharia (*mutaqawwan*) and the applicable legislation.
2. The quantity and/or quality of ujah should be clear, such as the nominal, the certain presentage, or a formula agreed which known by the parties of contract.
3. Ujah may be paid in cash, instalment/gradually, and suspended with the sharia, deal, and/or applicable legislation.
4. Ujah agreed may be reviewed upon the benefits that have not been accepted by a *muwakkil* according to the agreement.<sup>82</sup>

Whrereas in this Fatwa is specifcly give attention for the activities and products of wakalah bi al-ujrah is sharia insurance payment, account payable transactions, the organization activities of pension plan, intervention activities, government sharia securities activities, syndication activities, and also

<sup>81</sup> Fatwa DSN-MUI No: 62/DSN-MUI/XII/2017 about Ju'alah Contract.

<sup>82</sup> Fatwa of DSN-MUI No. 113/DSN-MUI/IX/2017.

annuities programs. If related it with the rechargeable of electronic money that subjected to the electronic money holder, the contract used between a publisher of electronic money and/or third parties to the electronic money holders are not using the wakalh bi al-ujrah contract. Because the cost charged to the electronic money holder is not the cost of service agreed between the parties in contract. The object of the contract in the event of enactment rechargeable of electronic money is also not there. So in this case, the cost of rechargeable of electronic money does not use the wakalah bi al-ujrah.

According to the three kinds of contract described above about electronic money, we not found the clear of law over the contract used for enactment rechargeable of electronic money between the publisher of electronic money and/or third parties to the electronic money holders.

When viewed in the term of maslahah, the presence of law for enactment rechargeable of electronic money was not explained in detail by the ushul fiqh scholars. Etymologically of maslahah is a work which containeing the benefits. The nature of maslahah is as follow below:

1. Maslahah is the maslahah that not designated by a specific proporsition about recognized of it or not;
2. Maslahah must be in line with the intention of syara' in the Islamic Law;
3. In it is realization must can attract and reject the evil principle;
4. Maslahah must be achieved logically and accepted by common sense.<sup>83</sup>

The rechargeable of electronic money if we seen from the maslahah for the publisher of electronic money or the channels of refill service providers is

<sup>83</sup> Saifudin Zuhri, *Ushul Fiqh (Akal Sebagai Sumber Hukum Islam)*, Yogyakarta: Pustaka Pelajar, 2011, pages. 83-84.



masalah mursalah. Masalah mursalah is whose it existence is not supported by syara' or not cancelled by syara' though a detail proporsition but it was supported by a set of meaning od nash (al-Qur'an or Hadits). Because in the provition of fluency support facilities need the expenses for the care of the tools. So, the holder of electronic money who will to recharge the electronic money will be cost, the the cost will be allocated for the empowerment electronic machines as a supporting electronic money usage. But that rules not gives the maslahah for the holder of electronic money, because with the enactment of electronic money the societies felt harmed because they have been paid the purchasing of electronic money card previously. So the enactment of electronic money only gine the maslahah or benefit to the publisher of electronic money or third parties that provided the the recharging of electronic money services, whereas for the consumers or for the holder of electronic money felt harmed with the regulation.



#### **A. CONCLUSIONS**

According to the discussion and data analysis, there are conclusion about the enactment rechargeable of electronic money, such as below:

1. On the Juridical arguments can took the conclusion there is unharmonization of norm among the National Movement of Noncash by Bank Indonesia with the enactment of rechargeable rate of electronic money for the Regulation of Bank Indonesia No.20/6/PBI/2018 about

Electronic Money. A charge of the cost of rechargeable over electronic money to the consumers, this leads to less efficiency in encouraging the formation of the National Movement of Noncash.

On the economically arguments a banking as a publisher of electronic money, the enactment of rechargeable rate of electronic money is not worth than the cost of the investment, the cost of infrastructure provided, and other costs that have been incurred to support the effectiveness of the use of the electronic money among the people. Whereas the societies as a consumers of electronic money felt burned and do not agree with the enactment of rechargeable of electronic money.

On the sociological arguments the enactment of rechargeable rate of electronic money because of the banking as an issuer of electronic money requires a cost for maintenance and rent the infrastructure tools of electronic money. The imposition on the rechargeable of electronic money is also adjusted by the amount of the value of the top up has been done by the holder of electronic money. On the other side Bank Indonesia also made the effort to provide balance on the purchase of a new electronic money card in order to be affordable by the societies with the rechargeable of electronic money.

2. Fatwa of Islamic Scholars explained that the enactment of electronic money was allowed by the Law in Indonesia to conduct the transaction. In additions the contract between the parties of electronic money should be clear and it was not contained the *gharar*, and it must follow the Islamic

transaction scheme, so the right and the obligation both of parties can be aware. The rechargeable of electronic money if we see from the *maslahah* for the publisher of electronic money or the channels of refill service providers is *maslahah mursalah*. Because in the supplying of fluency support facilities need the expenses for the care of the tools. But that rules not gives the *maslahah* for the holder of electronic money, because with the enactment of electronic money the societies felt harmed because they have been paid the purchasing of electronic money card previously. So the enactment of electronic money only gives the *maslahah* or benefit to the publisher of electronic money or third parties that provided the recharging of electronic money services, whereas for the consumers or for the holder of electronic money felt harmed with the regulation.

## B. SUGGESTIONS

According to the discussion and data analysis, it can take the suggestions of the enactment rechargeable of electronic money, such as below:

1. For Bank Indonesia
  - a) Bank Indonesia is expected to reconsider the above regulations to be issued, the regulation that become Bank Indonesia authority according to the Banking Legislation.
  - b) Bank Indonesia expected to pay attention to the benefits and comfortable of both parties i.e. the Bank and/or nonbank and the consumers, so that no parties who felt aggrieved from both sides.

- c) Bank Indonesia expected to review the regulation to be issued, so there is no the conflict of norm with other legislation.

2. For the Government

- a) The Government should be able to guarantee the continuity of the activities that carry out by the citizens in order not to deviate from the applicable the law and the regulations.
- b) The Government should soon resolve this issue with the enforceability of the law that should clarify the enforced for citizens of Indonesia.

3. For the Scholars

- a) A scholar should immediately issue a Fatwa to clarify the law enforcement problems that occur on the enactment rechargeable of electronic money in this modern era.
- b) A scholar should immediately clarify the matters permitted by Islamic Law in modern problems of the polemics that happened lately in order not to deviate from Islamic Law.



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PERATURAN BANK INDONESIA  
NOMOR 20/6/PBI/2018  
TENTANG  
UANG ELEKTRONIK

DENGAN RAHMAT TUHAN YANG MAHA ESA

GUBERNUR BANK INDONESIA,

Menimbang :

- a. bahwa kebutuhan masyarakat untuk menggunakan uang elektronik di Indonesia terus mengalami peningkatan seiring dengan meningkatnya penyediaan sarana transaksi nontunai melalui pemanfaatan inovasi teknologi informasi sehingga model bisnis penyelenggaraan uang elektronik juga semakin berkembang;
- b. bahwa penyelenggaraan uang elektronik sebagai salah satu instrumen pembayaran nontunai di wilayah Negara Kesatuan Republik Indonesia harus tetap dilakukan dalam mata uang rupiah, memberikan manfaat bagi perekonomian Indonesia, dan dilakukan dengan tetap mengedepankan penerapan prinsip kehati-hatian, manajemen risiko, serta persaingan usaha yang sehat;
- c. bahwa untuk memastikan penyelenggaraan uang elektronik yang aman, efisien, lancar, dan andal, diperlukan pengaturan dan mekanisme pengawasan yang lebih terstruktur, terintegrasi, dan menyeluruh melalui penguatan aspek kelembagaan, standar keamanan, pemrosesan secara domestik, dan perlindungan konsumen uang elektronik termasuk kehati-hatian dalam pengelolaan dana *float*;
- d. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, dan huruf c



- e. , perlu menetapkan Peraturan Bank Indonesia tentang Uang Elektronik;

Mengingat :

1. Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 66, Tambahan Lembaran Negara Republik Indonesia Nomor 3843) sebagaimana telah beberapa kali diubah, terakhir dengan Undang-Undang Nomor 6 Tahun 2009 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2008 tentang Perubahan Kedua atas Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 7, Tambahan Lembaran Negara Republik Indonesia Nomor 4962);
2. Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 4843) sebagaimana telah diubah dengan Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 251, Tambahan Lembaran Negara Republik Indonesia Nomor 5952);
3. Undang-Undang Nomor 3 Tahun 2011 tentang Transfer Dana (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 39, Tambahan Lembaran Negara Republik Indonesia Nomor 5204);
4. Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 64,

Tambahan Lembaran Negara Republik Indonesia Nomor 5223);

MEMUTUSKAN:

Menetapkan : PERATURAN BANK INDONESIA TENTANG UANG ELEKTRONIK.

BAB I  
KETENTUAN UMUM

Pasal 1

Dalam Peraturan Bank Indonesia ini yang dimaksud dengan:

1. Bank adalah bank umum sebagaimana dimaksud dalam Undang-Undang yang mengatur mengenai perbankan, termasuk kantor cabang dari bank yang berkedudukan di luar negeri, dan bank umum syariah sebagaimana dimaksud dalam Undang-Undang yang mengatur mengenai perbankan syariah.
2. Lembaga Selain Bank adalah badan usaha bukan bank yang didirikan berdasarkan hukum Indonesia.
3. Uang Elektronik adalah instrumen pembayaran yang memenuhi unsur sebagai berikut:
  - a. diterbitkan atas dasar nilai uang yang disetor terlebih dahulu kepada penerbit;
  - b. nilai uang disimpan secara elektronik dalam suatu media *server* atau *chip*; dan
  - c. nilai uang elektronik yang dikelola oleh penerbit bukan merupakan simpanan sebagaimana dimaksud dalam Undang-Undang yang mengatur mengenai perbankan.
4. Nilai Uang Elektronik adalah nilai uang yang disimpan secara elektronik dalam suatu media *server* atau *chip* yang dapat

dipindahkan untuk kepentingan transaksi pembayaran dan/atau transfer dana.

5. Penerbit adalah pihak yang menerbitkan Uang Elektronik.
6. *Acquirer* adalah pihak yang:
  - a. melakukan kerja sama dengan penyedia barang dan/atau jasa sehingga penyedia barang dan/atau jasa mampu memproses transaksi Uang Elektronik yang diterbitkan oleh pihak selain *acquirer* yang bersangkutan; dan
  - b. bertanggung jawab atas penyelesaian pembayaran kepada penyedia barang dan/atau jasa.
7. Prinsipal adalah pihak yang bertanggung jawab atas:
  - a. penerusan data transaksi Uang Elektronik melalui jaringan;
  - b. pelaksanaan perhitungan hak dan kewajiban;
  - c. penyelesaian pembayaran; dan
  - d. penetapan mekanisme dan prosedur bisnis, antar anggotanya yang berperan sebagai Penerbit dan/atau *Acquirer* dalam transaksi Uang Elektronik.
8. Penyelenggara *Switching* adalah pihak yang menyelenggarakan kegiatan penyediaan infrastruktur yang berfungsi sebagai pusat dan/atau penghubung penerusan data transaksi pembayaran dengan menggunakan Uang Elektronik.
9. Penyelenggara Kliring adalah pihak yang melakukan perhitungan hak dan kewajiban keuangan masing-masing Penerbit dan/atau *Acquirer* setelah pelaksanaan transaksi Uang Elektronik.
10. Penyelenggara Penyelesaian Akhir adalah pihak yang melakukan dan bertanggung jawab terhadap penyelesaian akhir atas hak dan kewajiban keuangan masing-masing

Penerbit dan/atau *Acquirer* berdasarkan hasil perhitungan dari Penyelenggara Kliring.

11. Penyelenggara Uang Elektronik yang selanjutnya disebut Penyelenggara adalah Penerbit, *Acquirer*, Prinsipal, Penyelenggara *Switching*, Penyelenggara Kliring, dan Penyelenggara Penyelesaian Akhir dalam kegiatan Uang Elektronik.
12. Penyelenggara Jasa Sistem Pembayaran adalah penyelenggara jasa sistem pembayaran sebagaimana dimaksud dalam ketentuan Bank Indonesia yang mengatur mengenai penyelenggaraan pemrosesan transaksi pembayaran.
13. Penyelenggara Penunjang adalah penyelenggara penunjang sebagaimana dimaksud dalam ketentuan Bank Indonesia yang mengatur mengenai penyelenggaraan pemrosesan transaksi pembayaran.
14. Pengguna adalah pihak yang menggunakan Uang Elektronik.
15. Penyedia Barang dan/atau Jasa adalah pihak yang menjual barang dan/atau jasa yang menerima pembayaran dari Pengguna.
16. Pengisian Ulang (*Top Up*) adalah penambahan Nilai Uang Elektronik pada Uang Elektronik.
17. Dana *Float* adalah seluruh Nilai Uang Elektronik yang berada pada Penerbit atas hasil penerbitan Uang Elektronik dan/atau Pengisian Ulang (*Top Up*) yang masih merupakan kewajiban Penerbit kepada Pengguna dan Penyedia Barang dan/atau Jasa.
18. Layanan Keuangan Digital yang selanjutnya disingkat LKD adalah kegiatan layanan jasa sistem pembayaran dan keuangan yang dilakukan oleh Penerbit melalui kerja sama

dengan pihak ketiga serta menggunakan sarana dan perangkat teknologi berbasis *mobile* maupun berbasis *web* untuk keuangan inklusif.

19. Penyelenggara LKD adalah Penerbit yang telah memperoleh persetujuan Bank Indonesia untuk menyelenggarakan LKD.
20. Agen LKD adalah pihak ketiga yang bekerja sama dengan Penerbit dan bertindak untuk dan atas nama Penerbit dalam memberikan LKD.

#### Pasal 51

- 1) Uang Elektronik yang diterbitkan di Indonesia wajib menggunakan satuan uang rupiah.
- 2) Transaksi yang menggunakan Uang Elektronik dan dilakukan di wilayah Negara Kesatuan Republik Indonesia wajib menggunakan rupiah.

#### Pasal 52

- 1) Dalam penyelenggaraan Uang Elektronik, Penerbit dapat mengenakan biaya yang meliputi:
  - a. biaya pembelian media Uang Elektronik untuk penggunaan pertama kali atau penggantian media Uang Elektronik yang rusak atau hilang;
  - b. biaya Pengisian Ulang (*Top Up*);
  - c. biaya tarik tunai yang dilakukan melalui pihak lain atau kanal pihak lain (*off us*); dan
  - d. biaya transaksi transfer dana antar-Pengguna pada Uang Elektronik dari Penerbit yang berbeda.
- 2) Bank Indonesia berwenang menetapkan kebijakan mengenai biaya yang dapat dikenakan oleh Penerbit berdasarkan pertimbangan tertentu.



### Pasal 53

- 1) Dalam melaksanakan kegiatannya, Prinsipal wajib:
  - a. menetapkan prosedur dan persyaratan yang obyektif dan transparan kepada seluruh Penerbit dan/atau *Acquirer* yang menjadi anggota Prinsipal yang bersangkutan;
  - b. memastikan keamanan dan keandalan system dan/atau jaringan yang digunakan oleh seluruh Penerbit dan/atau *Acquirer* yang menjadi anggota Prinsipal yang bersangkutan; dan
  - c. menyusun perjanjian kerja sama secara tertulis dengan Penerbit dan/atau *Acquirer* yang menjadi anggota Prinsipal yang bersangkutan.
- 2) Ketentuan sebagaimana dimaksud pada ayat (1) huruf b wajib dilakukan juga oleh Prinsipal terhadap pihak lain yang bekerja sama dengan Penerbit dan/atau *Acquirer*.

PENJELASAN  
ATAS  
PERATURAN BANK INDONESIA  
NOMOR 20/6/PBI/2018  
TENTANG  
UANG ELEKTRONIK

I. UMUM

Sejak pertama kali diatur secara khusus oleh Bank Indonesia pada tahun 2009, penyelenggaraan dan penggunaan Uang Elektronik di

Indonesia telah mengalami perkembangan yang signifikan. Uang Elektronik menjadi salah satu instrumen nontunai yang secara stabil terus mengalami peningkatan baik dari sisi volume maupun nominal transaksi per tahunnya. Penggunaan untuk transaksi pembayaran bernilai kecil, cepat, dan masif merupakan karakteristik Uang Elektronik yang menjadikannya sebagai pilihan instrumen pembayaran nontunai yang diminati masyarakat.

Selain digunakan untuk transaksi pembayaran yang sesuai dengan karakteristiknya, seperti transaksi pembayaran di bidang transportasi dan transaksi pembelanjaan, penggunaan Uang Elektronik pun diperluas untuk mendukung keuangan inklusif melalui LKD, penyaluran dana untuk program pemerintah, dan pembayaran transaksi *e-commerce* yang dewasa ini semakin berkembang. Perkembangan penggunaan Uang

Elektronik yang semakin bervariasi tersebut harus terus diiringi dan didukung dengan kebijakan dan pengaturan oleh Bank Indonesia serta penyediaan infrastruktur Uang Elektronik oleh pelaku industri.

Pengembangan penyelenggaraan Uang Elektronik perlu didukung

dengan penguatan pengaturan terhadap penyelenggaraan Uang Elektronik seperti penguatan terhadap aspek kelembagaan Penyelenggara melalui kewajiban modal minimum Penerbit dan rencana bisnis yang lebih komprehensif, dan kewajiban penyediaan infrastruktur yang saat ini masih terpusat pada kota besar di Indonesia guna mendukung terciptanya pemerataan infrastruktur untuk meningkatkan penggunaan Uang Elektronik.

Melalui penguatan aspek kelembagaan Penyelenggara tersebut, dapat diseleksi Penyelenggara yang kredibel sehingga industri Uang Elektronik akan semakin berkembang dengan baik dan kuat serta tercipta persaingan usaha yang sehat.

Dalam perkembangannya, Bank Indonesia juga memperhatikan perkembangan penyelenggaraan Uang Elektronik yang digunakan secara terbatas (*closed loop*) saat nominal dan volume transaksi Uang Elektronik tersebut semakin tinggi dengan jumlah Pengguna yang terus bertambah. Meskipun penggunaannya terbatas, penyelenggaraan Uang Elektronik tersebut tetap memiliki risiko baik di sisi Penyelenggara maupun Pengguna antara lain terkait pengelolaan Dana *Float* oleh Penerbit dan keamanan sistem informasi terhadap Uang Elektronik yang diselenggarakan. Mempertimbangkan hal tersebut, Bank Indonesia memandang perlu adanya pengaturan mengenai penyelenggaraan Uang

Elektronik *closed loop* guna memastikan diterapkannya manajemen risiko, prinsip kehati-hatian, dan perlindungan konsumen dalam penyelenggaraan Uang Elektronik *closed loop*.

Perkembangan teknologi informasi juga menjadi salah satu pertimbangan dalam melakukan penguatan pengaturan dengan tetap memberikan ruang inovasi dan pemanfaatan teknologi informasi dalam penyelenggaraan Uang Elektronik. Hal ini diakomodir antara lain melalui pengaturan fitur keamanan transaksi yang disesuaikan dengan batas paling banyak Nilai Uang Elektronik.

Penyelenggaraan Uang Elektronik juga perlu diselaraskan dengan beberapa ketentuan Bank Indonesia yang telah diterbitkan antara lain ketentuan Bank Indonesia yang mengatur mengenai penyelenggaraan pemrosesan transaksi pembayaran dan ketentuan Bank Indonesia yang mengatur mengenai gerbang pembayaran nasional serta ketentuan peraturan perundang-undangan lainnya. Hal ini untuk memastikan tidak terjadi tumpang tindih pengaturan khususnya terkait perizinan, kewajiban yang harus dipenuhi, dan penyampaian laporan oleh Penyelenggara.

Sehubungan dengan hal tersebut, perlu dilakukan pengaturan kembali terhadap Uang Elektronik dalam suatu Peraturan Bank Indonesia.

## II. PASAL DEMI PASAL

### Pasal 1

Cukup jelas.

### Pasal 2

Cukup jelas.

### Pasal 3

Ayat (1)

Huruf a

Cukup jelas.

Huruf b

Termasuk Uang Elektronik *open loop* yaitu Uang Elektronik yang digunakan pada Penyedia Barang dan/atau Jasa yang merupakan entitas yang berbeda dengan Penerbit namun memiliki hubungan kepemilikan dan/atau hubungan pengelolaan usaha dengan Penerbit, misalnya *group holding*, waralaba (*franchise*), dan jaringan ritel *online*.

Ayat (2)

Cukup jelas.

Pasal 52

Ayat (1)

Huruf a

Biaya pembelian atau penggantian media Uang Elektronik yaitu pembelian atau penggantian media Uang Elektronik dengan media penyimpan berupa *chip* (Uang Elektronik *chip based*).

Huruf b

Biaya yang dapat dikenakan meliputi biaya Pengisian Ulang (*Top Up*) yang dilakukan melalui kanal pembayaran Penerbit yang sama (*on us*) atau yang dilakukan melalui pihak lain yang bekerja sama dengan Penerbit dan/atau menggunakan kanal pembayaran pihak lain (*off us*).

Huruf c

Cukup jelas.

Huruf d



Cukup jelas.

Ayat (2)

Contoh kebijakan mengenai biaya antara lain penetapan jenis dan besaran biaya yang dapat dikenakan oleh Penerbit.



FATWA DEWAN SYARIAH NASIONAL MAJELIS ULAMA  
INDONESIA

NO: 116IDSN-MUUIW 2017

Tentang  
UANG ELEKTRONIK SYARIAH

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI)  
setelah,

Menimbang :

- a. bahwa alat pembayaran berupa uang elektronik yang diterbitkan oleh bank maupun lembaga selain bank saat ini semakin berkembang di Indonesia;
- b. bahwa masyarakat Indonesia memerlukan penjelasan mengenai ketentuan dan batasan hukum terkait uang elektronik dari segi syariah;
- c. bahwa berdasarkan pertimbangan huruf a dan huruf b, DSN-MUI memandang perlu untuk menetapkan fatwa tentang Uang Elektronik Syariah untuk dijadikan pedoman;

Mengingat:

1. Firman Allah SWT:
  - a. Q.S.al-Nisa' (4): 58:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا.....

"Sesungguhnya Allah menyuruh kamu menyampaikan amanat kepada yang berhak menerimanya ...".

- b. Q.S.al-Ma'idah (5): 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ.....

"Hai orangyang beriman! Tunaiknlah akad-akad itu -.."

- c. Q.S. al-Isra' (17):34:

وَأَوْفُوا بِالْعَهْدِ ۖ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

"Dan tunaikanlah janji-janji itu; sesungguhnya janji itu akan dimintai pertanggungjawaban..."

- d. Q.S. al-Nisa' (4):29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ.....

"Hai orang-orang yang beriman! Janganlah kalian memakan (mengambil) harta orang lain secara batil, kecuali jika betapa perdaganganyang dilandasi atas sukarela di antara kalian...."

- e. Q.S. Al-Kahfi (18): 19:

فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا

"Maka suruhlah salah seorang di antara kamu untuk pergi ke kota dengan membawa uang perakmu ini, dan hendaklah dia lihat manakah makanan yang paling baik, maka hendaklah ia membawa makanan itu untukmu, dan hendaklah ia berlaku lemah-lembut dan janganlah sekali-kali menceritakan halmu kepada seorang pun"

- f. Q.S. al-Furqan (25): 67 :

وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا

"Dan orang-orang yang apabila membelanjakan (harta), mereka tidak berlebih-lebihan, dan tidak (pula) kikir, dan adalah (pembelaniaan itu) di tengah-tengah antara yang demikian."

- g. Q.S. al-Qashash (28'): 26:

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ ۖ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

"Salah seorang dari kedua wanita itu berkata, 'Hai ayahku! Ambil lah ia sebagai arang yang bekerja (pada kita), karena sesungguhnya orang yang paling baik yang knmu ambil untuk bekerja (pada kita) adalah orang yang kuat lagi dapat dipercaya. "

- h. Q.S. al-Baqarah (2): 275 :

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَتُوبُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ  
ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۚ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ  
مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۚ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ  
النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ

"Orang yang makan (mengambil) riba tidak dapat berdiri melainkan, seperti berdirinya orang yang kemasukan syaitan lantaran (tekanan) penyakit gila. Keadaan mereka yang demikian itu adalah disebabkan mereka berkata (berpendapat), sesungguhnya jual beli itu sama dengan riba, padahal Allah telah menghalalkan jual beli dan mengharamkan riba. Orang yang telah sampai kepadanya larangan dari Tuhannya, lalu terus berhenti (dari mengambil riba), maka baginya apa yang telah diambilnya dahulu (sebelum datang larangan); dan urusannya (terserah) kepada Allah. Orang yang lnengulangi (mengambil riba), maka orang itu adalah penghuni-penghuni neraka; mereka kekal di dalamnya."

- i. Q.S. al-Baqarah (2):282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ۚ

"Hai orang yang beriman! Jika kamu bermu'amalah tidak secara tunai sampai waktu tertentu, buatlah secara tertulis..."

#### MEMUTUSKAN:

Menetapkan: FATWA TENTANG UANG ELEKTRONIK SYARIAH

Pertama : Ketentuan Umum

Dalam fatwa ini yang dimaksud dengan:

1. Uang elektronik (electronic money) adalah alat pembayaran yang memenuhi unsur-unsur berikut:
  - a. diterbitkan atas dasar jumlah nominal uang yang disetor terlebih dahulu kepada penerbit;
  - b. jumlah nominal uang disimpan secara elektronik dalam suatu media yang teregistrasi;
  - c. jumlah nominal uang elektronik yang dikelola oleh penerbit bukan merupakan simpanan sebagaimana dimaksud dalam undang-undang yang mengatur mengenai perbankan; dan
  - d. digunakan sebagai alat pembayaran kepada pedagang yang bukan merupakan penerbit uang elektronik tersebut.
2. Uang elektronik syariah adalah uang elektronik yang sesuai dengan prinsip-prinsip syariah.
3. Jumlah nominal uang elektronik adalah jumlah nominal uang yang disimpan secara elektronik



- yang dapat dipindahkan karena keperluan transaksi pembayaran dan/atau transfer dana
4. Penerbit adalah bank atau lembaga selain bank yang menerbitkan uang elektronik.
  5. Pemegang uang elektronik adalah pihak yang menggunakan uang elektronik.
  6. Prinsipal adalah bank atau lembaga selain bank yang bertanggungjawab atas pengelolaan sistem dan/atau jaringan antar anggotanya yang berperan sebagai penerbit dan/atau acquirer, dalam transaksi uang elektronik yang kerja sama dengan anggotanya didasarkan atas suatu perjanjian tertulis.
  7. Acquirer adalah bank atau lembaga selain bank yang:
    - a. melakukan kerja sama dengan pedagang sehingga pedagang mampu memproses transaksi dari uang elektronik yang diterbitkan oleh pihak selain acquirer yang bersangkutan; dan
    - b. bertanggungjawab atas penyelesaian pembayaran kepada pedagang.
  8. Pedagang (merchant) adalah penjual barang dan atau jasa yang menerima transaksi pembayaran dari Pemegang.
  9. Penyelenggara kliring adalah bank atau lembaga selain bank yang melakukan perhitungan hak dan kewajiban keuangan masing-masing Penerbit dan/atau Acquirer dalam rangka transaksi uang elektronik.

10. Penyelenggara penyelesaian akhir adalah bank atau lembaga selain bank yang melakukan dan bertanggungjawab terhadap penyelesaian akhir atas hak dan kewajiban keuangan masing-masing penerbit dan/atau acquirer dalam rangka transaksi uang elektronik berdasarkan hasil perhitungan dari penyelenggara kliring.
11. Agen Layanan Keuangan Digital (LKD) adalah pihak ketiga yang bekerjasama dengan penerbit dan bertindak untuk dan atas nama penerbit dalam memberikan layanan keuangan digital.
12. Akad wadi'ah adalah akad penitipan uang dari pemegang uang elektronik kepada penerbit dengan ketentuan pemegang uang elektronik dapat mengambil/menarik/menggunakan kapan saja sesuai kesepakatan.
13. Akad qardh adalah akad pinjaman dari pemegang uang elektronik kepada penerbit dengan ketentuan bahwa penerbit wajib mengembalikan uang yang diterimanya kepada pemegang kapan saja sesuai dengan kesepakatan.
14. Akad Ijarah adalah akad pemindahan hak guna (manfaat) atas suatu barang atau jasa dalam waktu tertentu dengan pembayaran atau upah.
15. Akad ju'alah adalah akad untuk memberikan imbalan (reward/'iwadh//ju'f tertentu atas pencapaian hasil (natijah) yang ditentukan dari suatu pekerjaan.
16. Akad wvakah bi al-ujrah adalah akad wakalah dengan imbalan (ujrah).

17. Biaya layanan fasilitas uang elektronik adalah biaya yang dikenakan penerbit kepada pemegang berupa:

- a. biaya penggantian media uang elektronik untuk penggunaan pertama kali atau penggantian media uang elektronik yang rusak atau hilang;
- b. biaya pengisian ulang (.top up) melalui pihak lain yang bekerjasama dengan penerbit atau menggunakan delivery channel pihak lain;
- c. biaya tarik tunai melalui pihak lain yang bekerjasama dengan Penerbit atau menggunakan delivery channel pihak lain;
- d. biaya administrasi untuk uang elektronik yang tidak digunakan dalam jangka waktu tertentu.

18. Riba adalah tambahan yang diberikan dalam pertukaran barang-barang ribawi (al-amwal ctil-ribawiyah) dan tambahan yang diberikan atas pokok utang dengan imbalan penangguhan pembayaran secara mutlak.

19. Gharar adalah ketidakpastian dalam suatu akad, baik mengenai kualitas atau kuantitas obyek akad maupun mengenai penyerahannya.

20. Maysir adalah setiap akad yang dilakukan dengan tujuan yang tidak jelas, dan perhitungan yang tidak cermat, spekulasi, atau untung-untungan

21. Tadlis adalah tindakan menyembunyikan kecacatan obyek akad yang dilakukan oleh

penjual untuk mengelabui pembeli seolah-olah obyek akad tersebut tidak cacat.

22. Risywah adalah suatu pemberian yang bertujuan untuk mengambil sesuatu yang bukan haknya, membenarkan yang batil dan menjadikan sesuatu yang batil sebagai sesuatu yang benar.

23. Israf adalah pengeluaran harta yang berlebihan.

Kedua : Ketentuan Hukum

Uang elektronik boleh digunakan sebagai alat pembayaran dengan mengikuti ketentuan yang terdapat dalam fatwa ini.

Ketiga : Ketentuan terkait Akad dan Personalia Hukum

1. Akad antara penerbit dengan pemegang uang elektronik adalah akad wadi'ah atau akad qardh.

a. Dalam hal akad yang digunakan adalah akad wadi'ah, maka berlaku ketentuan dan batasan akadwadi'ah sebagai berikut:

1) Jumlah nominal uang elektronik bersifat titipan yang dapat diambil/digunakan oleh pemegang kapan saja;

2) Jumlah nominal uang elektronik yang dititipkan tidak boleh digunakan oleh penerima titipan (penerbit), kecuali atas izin pemegang kartu;

3) Dalam hal jumlah nominal uang elektronik yang dititipkan digunakan oleh penerbit atas izin pemegang kafi, maka akad titipan (wadi'ah) berubah menjadi akad pinjaman

(qardh), dan tanggung jawab penerima titipan sama dengan tanggungjawab dalam akad qardh.

- 4) Otoritas terkait wajib membatasi penerbit dalam penggunaan dana titipan dari pemegang kartu (dana float).
- 5) Penggunaan dana oleh penerbit tidak boleh bertentangan dengan prinsip syariah dan peraturan pemndang-undangan.

b. Dalam hal akad yang digunakan adalah akad qardh, maka berlaku ketentuan dan batasan akad q ar dh sebagai berikut:

- 1) Jumlah nominal uang elektronik bersifat hutang yang dapat diambil digunakan oleh pemegang kapan saja.
- 2) Penerbit dapat menggunakan (menginvestasikan) uang hutang dari pemegang uang elektronik.
- 3) Penerbit wajib mengembalikan jumlah pokok piutang Pemegang uang elektronik kapan saja sesuai kesepakatan;
- 4) Otoritas terkait wajib membatasi penerbit dalam penggunaan dana pinjaman (utang) dari pemegang kartu (danafloat).
- 5) Penggunaan dana oleh penerbit tidak boleh bertentangan dengan prinsip syariah dan peraturan perundang-undangan.

2. Di antara akad yang dapat digunakan penerbit dengan para pihak dalam penyelenggaraan uang elektronik prinsipal, acquirer, Pedagang



merchant, penyelenggara kliring, dan penyelenggara penyelesai akhir) adalah akad ijarah, akad ju'alah, dan akad wakalah bi al-ujrah.

- a. Dalam hal akad yang digunakan akad ijarah, maka berlaku ketentuan dan batasan akad ijarah sebagaimana terdapat dalam DSN-MUI Nomor: 112/DSN-MUI/IX/2017 tentang Akad Ijarah.
  - b. Dalam hal akad yang digunakan akad ju'alah, maka berlaku ketentuan dan batasan akad ju'alah sebagaimana terdapat dalam DSN-MUI Nomor: 62/DSN-MUI/XII/2007 tentang Akad Ju'alah.
  - c. Dalam hal akad yang digunakan akad wakalah bi al-ujrah, maka berlaku ketentuan dan batasan akad wakalah bi al-ujrah sebagaimana terdapat dalam DSN-MUI Nomor: 113/DSN-MUI/IX/2017 tentang Wakalah bi al-Ujrah.
3. Di antara akad yang dapat digunakan antara penerbit dengan agen layanan keuangan digital adalah akad ijarah, akad ju'alah, dan akad wakalah bi al-ujrah.
- a. Dalam hal akad yang digunakan akad ijarah, maka berlaku ketentuan dan batasan akad ijarah sebagaimana terdapat dalam DSN-MUI Nomor: 112/DSN-MUI/IX/2017 tentang Akad Ijarah.
  - b. Dalam hal akad yang digunakan akad ju'alah, maka berlaku ketentuan dan batasan akad

ju'alah sebagaimana terdapat dalam DSN-MUI Nomor: 62/DSN-MUI/XII/2007 tentang Akad Ju'alah.

- c. Dalam hal akad yang digunakan akad wakalah bi al-ujrah, maka berlaku ketentuan dan batasan akad wakalah bi al-ujrah sebagaimana terdapat dalam DSN-MUI Nomor: 113/DSN14UUIX/2017 tentang Wakalah bi al-Ujrah.



## CURRICULUM VITAE

### Personal Detail



Name : Ni'matul Masruroh

Birth Place : Pasuruan

Birth Date : December 27<sup>th</sup> 1994

Gender : Female

Religion : Islam

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### Format Education

2000-2002 : TK PKK 1 Sumberejo

2002-2008 : SDN 1 Tawangrejo

2008-2011 : SMPN 1 Pandaan

2011-2014 : Gontor for Girl Campus 3