CHAPTER II

LITERATURE REVIEW

A. Theoretical framework

In this research, researcher would use Legal Protection Theory (*Rechtsbscherming* Theory) and Progressive Law Theory as the most suitable for this research.

1. Legal Protection Theory

Legal protection is a representation of the implementation of the function of law to reach three purposes of law, such as justice, expediency, and legal certainty.

According to Philipus M. Hadjon, Indonesia as a state law based on Pancasila has to give a legal protection to its citizens as what has been explained in Pancasila itself, therefore legal protection according to Pancasila means acknowledgement and legal protection to human's value and dignity based on belief in the one and only God, humanity, unity, and social justice.[17] These values reveal acknowledgement and protection towards human rights inside of unity country which honoring spirit of brotherhood to reach the commonwealth.

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[17] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), pg. 84.

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Philipus M. Hadjon stated that: [18]

"Legal protection is a protection of human's value and dignity and recognition of human rights which owned by legal subject in a legal country based on regulations or rules that available in that country to prevent arbitrariness. Legal protection was usually formed into a written regulation, so the characteristic is more binding and causing sanction which has to be downed to the party who against it".

Phillipus M. Hadjon divided legal protection into two types, which are:[19]

a.   Preventive legal protection

Preventive legal protection is aiming to prevent conflicts that might happen in the future by using rules or regulations. Preventive legal protection gives a big meaning to the government because with preventive legal protection, government is being pushed to be more careful in order to take a decision or action either which is based on discretion. There are no special arrangement yet related to preventive legal protection in Indonesia.

b.   Repressive legal protection

Repressive legal protection is aiming to solve case or dispute that happened. Legal protection first principal is towards government's action focused and came from the concept which about acknowledgement and protection

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[18] *Ibid.*, pg. 250.
[19] *Ibid.*, pg. 117.

towards human rights because according to western's history, the reveal of acknowledgement and protection towards human rights concepts were directed to the restrictions and laying liabilities of society and government.[20] Second principal underlie legal protection towards government's action named as state law principal. Associated with the acknowledgement and protection of human rights got the first place or priority and could be associated with the purpose of state law.

2. Progressive Law Theory

Progressive Law means the laws which have been developed. The literal meaning of progressive is favoring new, modern ideas, happening or developing steadily. According to Satjipto Rahardjo, progressive law based of assumption that law is for human, not human for law.[21]

Satjipto Rahardjo stated the meaning of progressive law is the series of radical actions, with changing law system (including the changing law regulations if needed) so the law could be more useful, especially in self-esteem and to guarantee of human's

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[20] *Ibid.*, pg. 38.
[21] Sudut Hukum, 2016, "*Pengertian Hukum Progresif*" http://www.suduthukum.com/2016/04/pengertian-hukum-progresif.html, accessed on 14th December 2016.

happiness and welfare.[22] Progressive law also means a liberation movement because it tends to be fluid and always agitated in searching from one truth to the next truth.[23] So definitely law is to make humans happy, law is dedicated to human's behalf. This concept means that law is not just for humans, but to beatify all creatures.[24]

Moh. Mahfud MD who was the ex of the Head Constitutional Court stated that to a judge, progressive law is a law which focused on judge's belief, where the judge was not shackled by the laws or regulations.[25] By using progressive law, a judge dares to find and give justice with crossing the laws or regulations, because laws or regulations are not always giving justice.[26] The criteria of progressive law are:[27]

a. Have a big purpose, which by human's happiness and welfare;

b. Contained of very powerful humanity moral;

c. Progressive law is a law that release a very wide dimension which not only to move on practical area but also theoretical either; and

d. Critical and functional.

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[22] *Ibid.*, accessed on 14th December 2016.

[23] HukumOnline, 2013, "*Menggali Karakter Hukum Progresif*" http://www.hukumonline.com/berita/baca/lt529c62a965ce3/menggali-karakter-hukum-progresif, accessed on 14th December 2016.

[24] *Ibid.*, accessed on 14th December 2016.

[25] *Ibid.*, accessed on 14th December 2016.

[26] *Ibid.*, accessed on 14th December 2016.

[27] Sudut Hukum, 2016, "*Pengertian Hukum Progresif*" http://www.suduthukum.com/2016/04/pengertian-hukum-progresif.html, accessed on 14th December 2016.

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B. Conceptual framework

1. Definitions

Based on Oxford dictionary, protection means act to protect somebody or something.[28] Bank is a place where money or fund is kept safely.[29] Bank was explained more in Indonesia Law Number 10 of 1998 concerning Banking which bank is a business entity which to gathering funds from society in the form of saving and to deliver them to society in the form of credit and/or other forms in order to increasing lots of people standard living.[30]

Customer means person who buys something in a shop, etc., uses a service, etc.[31] According to Indonesian Bank Regulation of 8/5/PBI/2006, Customer is a party who use bank's services, including the party who didn't have any account in the bank but to use bank's service to do financial transaction (walk-in customer).

Malware is an abbreviation of malicious software which refers to software programs designed to damage or do other unwanted actions on a computer system.[32] Malicious is an adjective noun of malice which means

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[28] Oxford Learner's Pocket Dictionary, (China: Oxford University Press, 2003), 3rd Edition, pg. 344.
[29] *Ibid.*, pg. 28.
[30] Indonesia Law Number 10 of 1998 concerning Banking, Article 1 section (2).
[31] Oxford Learner's Pocket Dictionary, *op.cit.*, 3rd Edition, pg. 106.
[32] TechTerms, "Malware" http://techterms.com/definition/malware, accessed on 24th October 2016.

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desire to harm other people.[33] Software is programs, etc., used to operate a computer.[34] Trojan means a program that appears legitimate but performs some illicit activity when run. Trojan may be used to locate password information or make the system more vulnerable to future entry or simply destroy the user's stored software and data.[35]

2. Conceptual approaches

a. Bank customers

Indonesia Law Number 24 of 2004 concerning Institution Guarantor Deposit recognized the definition of bank customers as explained in Indonesia Law Number 10 of 1998 concerning Banking Changes of Indonesia Law Number 7 of 1992 concerning Banking, are:

1) Depositor

Customer who deposited his/her money in a bank in the form of saving based on bank's agreement with the concerned customer.

2) Debtor

Customer who received credit facility or finance based on sharia principle which

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[33] Oxford Learner's Pocket Dictionary, *op.cit.*, pg. 260.

[34] *Ibid.*, pg. 411.

[35] PC Mag, "Definition of: Trojan" http://www.pcmag.com/encyclopedia/term/53178/trojan, accessed on 24th October 2016.

equated with it based on the agreement between the bank and the concerned customer.

Practically, in banking there are three types of customer that have known, which are:[36]

1) Depository customer, which is a customer who saved his/her funds in a bank.

2) Customer who utilize banking credit facility.

3) Customer who do transaction with other party through bank.

b. Sources of Malware Trojan

Malware Trojan is a very dangerous and the most familiar form of threat which has the potential for software attack. [37] This kind of threat was designed to damage, destroy, or deny service to target systems. Malware Trojan also could erase files, steal data and/or information, open browser continuously, activate other dangerous malwares, etc.[38]

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[36] Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, (Bandung: Citra Aditya Bakti, 2003), pg. 40-41.

[37] Michael E. Whitman & Herbert J. Mattord, *Principles of Information Security*, (Canada: Thomson Learning, 2003), pg. 55.

[38] Siswa Master, "*Pengertian dan Jenis-jenis Malware beserta Contohnya*" http://www.siswamaster.com/2016/01/pengertian-dan-jenis-malware-serta-contohnya.html, accessed on 7th October 2016.

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Malware Trojan was included in the deliberate software attacks threat category and there are several threats to information security which elaborated by the table below.

Table 2.1.

Threats to Information Security

No.	Categories of threat	Examples
1	Acts of human error or failure	Accidents, employee mistakes
2	Compromises to intellectual property	Piracy, copyright infringement
3	Deliberate acts of espionage or trespass	Unauthorized access and/or data collection
4	Deliberate acts of information extortion	Blackmail of information disclosure
5	Deliberate acts of sabotage or vandalism	Destruction of systems or information
6	Deliberate acts of theft	Illegal confiscation or equipment or information
7	Deliberate software attacks	Viruses, worms, macros, denial of service
8	Forces of nature	Fire, flood, earthquake, lightning

9	Deviations in quality of service from service providers	Power and WAN service issues
10	Technical hardware failures or errors	Equipment failure
11	Technical software failures or errors	Bugs, code problems, unknown loopholes
12	Technological obsolescence	Antiquated or outdated technologies

Source: "Principles of Information Security", by Michael E. Whitman & Herbert J. Mattord, 2003, pg. 44. [39]

Deliberate software attacks which commonly are:[40]

1) Virus

Computer viruses are segments of code that behaves very much like a virus pathogen attacking animals and plants, using the cell's own replication machinery to propagate attack which attaches itself to the existing program and takes control of that program's access to the targeted computer.

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[39] Michael E. Whitman & Herbert J. Mattord, *op.cit*., (Canada: Thomson Learning, 2003), pg. 44.
[40] *Ibid.*, pg 56-59.

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Basically there are two types of viruses:

a) Macro virus

Virus which embedded in automatically executing macro mode, common in office productivity software such as word processors, spread sheets, and database applications.

b) Boot virus

Virus that infects the key operating systems files located in a computer's boot sector.

2) Worms

Worms are malicious programs that replicate themselves constantly without requiring another program to provide a safe environment for replication. Example: Code Red, Sircam, Nimda, Klez, etc.

3) Trojan horses

Trojan horses are software programs that hide their true nature, and reveal their designed behavior only when activated.

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Example: Win-trojan/SubSeven, Win-trojan/Back Orifice, Win-trojan/Ecokys, Zeus, Beast, Win32/sirefef, and last but not list is Prorat.[41] Zeus was the one of the type of Trojan Horses which was used by the criminal to attack internet banking system and caused token synchronization.[42]

4) Back door or Trap door

A virus or worm can have a payload that installs a back door or trap door component in a system which allows attacker to access system at will with special privileges. Example: Subseven or Back Orifice.

5) Polymorphism

Polymorphism is a polymorphic threat is one that changes its apparent shape over time, representing a new threat not detectable by techniques that are looking for a preconfigured signature.

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[41] Siswa Master, *op.cit.*, accessed on 7th October 2016.
[42] Alfons Tanujaya, "*Akankah Sinkronisasi* Zeus *menyebabkan* Gameover Token?" https://www.vaksin.com/0315-gameover-token-banking, accessed on 23rd December 2016.

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6) Virus and Worm Hoaxes

As frustrating as viruses and worms are, perhaps more time and money is spent on resolving virus hoaxes.

c. Trojan Horses

1) History of Trojan Horses name adoption

"In Greek mythology, there is a story about the Trojan War. This war lasted many years, as the Greeks could not penetrate the heavily barricaded city of Troy. So one day, a few of the Greek soldiers brought the people of Troy a large wooden horse, which they accepted as a peace offering. The horse was moved inside the city walls, where it sat until the night. After the people of the city had fallen asleep, Greek soldiers jumped out of the wooden horse, opened the gates to let their fellow soldiers in, and took over the city."[43]

2) Additional information about Trojan Horses

Trojan horses different with viruses or worms, which the differences are:[44]

a) Trojan was under controlled by other computer (attacker's computer) which to attack the victims;

b) Trojan looks invisible like a legal program but actually it is dangerous;

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[43] TechTerms, "Trojan Horse" http://techterms.com/definition/trojanhorse, accessed on 22th November 2016.

[44] Siswa Master, "*Pengertian dan Jenis-jenis Malware beserta Contohnya*" http://www.siswamaster.com/2016/01/pengertian-dan-jenis-malware-serta-contohnya.html, accessed on 7th October 2016.

c) Different with viruses and worms, Trojan cannot replicate itself. However, Trojan spreading through by user interactions such as e-mail or downloading files on internet; and

d) Trojan usually in the form of an executable file (*.exe) and placed inside the system which penetrated by the criminal to steal or destroy important data from the victims.

Ways of spreading and working of Trojan Horses in common:[45]

1) Trojan could infect system when user is downloading applications (commonly non-genuine applications or game) from unknown sources on internet.

2) Inside of those applications actually contained of Trojan code which allow a criminal to destroy the user's computer system.

3) Habitually, Trojan was taken by other utility program, or in other words this Trojan

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[45] *Ibid.*, accessed on 7th October 2016

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masquerade itself as a utility program in the computer.

4) Due to the characteristic itself which looks like a legal program (hiding with opening some gaps), most users were cheated to run it.

5) After the program running, the computer could be controlled freely by the attacker or criminal by his/her client version or to give way to other user to access the concerned system. Or to activate other malware (virus, worm) to make the process of destroying computer system easier.

Figure 2.1 The work process of Trojan Horses, source: Michael E. Whitman & Herbert J.

Mattord, Principles of Information Security, (Canada: Thomson Learning, 2003), pg. 59.[46]

Trojans are classified according to the type of actions that they can perform on your computer:[47]

1) Backdoor

A backdoor Trojan gives malicious users remote control over the infected computer. They enable the author to do anything they wish on the infected computer including sending, receiving, launching, and deleting files, displaying data, and rebooting the computer. Backdoor Trojans are often used to unite a group of victim computers to form a botnet or zombie network that can be used for criminal purposes.

2) Exploit

Exploits are programs that contain data or code that takes advantage of vulnerability within application software that is running on the computer.

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[46] Michael E. Whitman & Herbert J. Mattord, *Principles of Information Security*, (Canada: Thomson Learning, 2003), pg. 59.

[47] Kaspersky Lab, "What is a Trojan Virus? – Definition" https://usa.kaspersky.com/internet-security-center/threats/trojans#.WDUWCLJ97IU, accessed on 23rd November 2016.

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3) Rootkit

Rootkits are designed to conceal certain objects or activities in the computer's system. Often their main purpose is to prevent malicious programs being detected in order to extend the period in which programs can run on an infected computer.

4) Trojan-Banker

Trojan-Banker programs are designed to steal the account data for online banking systems, e-payment systems, and credit or debit cards.

5) Trojan-DDoS

These programs conduct DoS (Denial of Service) attacks against a targeted web address. By sending multiple requests from one computer and several other infected computers the attack can overwhelm the target address leading to a denial of service.

6) Trojan-Downloader

Trojan-Downloaders can download and install new versions of malicious programs into the computer including Trojans and adware.

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7) Trojan-Dropper

This program is used by hackers in order to install Trojans and/or viruses or to prevent the detection of malicious programs. Not all antivirus programs are capable of scanning all of the components inside this type of Trojan.

8) Trojan-FakeAV

Trojan-FakeAV programs simulate the activity of antivirus software. They are designed to extort money from one person in return for the detection and removal of threats even though the threats that they report are actually non-existent.

9) Trojan-GameThief

This type of program steals user's account information from online gamers.

10) Trojan-IM

Trojan-IM programs steal your logins and passwords for instant messaging programs such as ICQ, MSN Messenger, AOL Instant Messenger, Yahoo Pager, Skype, etc.

11) Trojan-Ransom

This type of Trojan can modify data on the

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computer so that the computer does not run correctly or can no longer use specific data. The criminal will only restore the computer's performance or unblock the data, after paid them the ransom money that they demand.

12) Trojan-SMS

These programs can cost money by sending text messages from the mobile device to premium rate phone numbers.

13) Trojan-Spy

Trojan-Spy programs can spy on how people are using the computer for example, by tracking the data people enter via the keyboards, taking screen shots, or getting a list of running applications.

14) Trojan-Mailfinder

This program can harvest email addresses from the computer.

15) Other types of Trojans include:

 a) Trojan-ArcBomb;

 b) Trojan-Clicker;

 c) Trojan-Notifier;

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d) Trojan-Proxy; and

e) Trojan-PSW.

As the classification above, token synchronization case was caused by Malware Trojan who was one of the threats that has been mentioned before.[48] Threat is one of the kind of efforts which to change or remodel the policy which done by any criminal act and politic.[49] The criminal who used Malware Trojan as a tool to attack customer's internet banking account definitely was committed a crime. Any crime committed by means of or by using a computer and an internet connection or computer technology is known as cybercrime.[50]

Below are the following activities that could be classified as a cybercrime:[51]

1) Spamming;

2) Stalking, Extortion, Blackmail, Bullying;

3) Phishing;

4) Hacking;

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[48] Alfons Tanujaya, "*Sinkronisasi Token (Artikel Info Komputer 1/3)*" https://www.vaksin.com/en/0415-sinkronisasi-token-part1, accessed on 22nd November 2016.

[49] Habibullah Al Faruq, "*Pengertian Ancaman, Tantangan, Hambatan, dan Gangguan*" http://www.habibullahurl.com/2015/05/pengertian-ancaman-tantangan-hambatan-gangguan.html, accessed on 15th November 2016.

[50] The Windows Club, "What is Cyber Crime? How to deal with it?" http://www.thewindowsclub.com/what-is-cybercrime-prevention, accessed on 15th November 2016

[51] *Ibid.*, accessed on 15th November 2016.

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5) Malware;

6) Exploiting vulnerabilities; and

7) Social Engineering and Identity Theft (fake emails, fake phone conversions using data obtained from Internet, to get more information about customers' data and customers' bank, cards, etc.).

d. *Rechtsvinding* (Legal Founding)

A judge could form laws if the judge does the rule of legal founding. The rule of legal founding interpreted as forming laws by the judge or other law officers who given duty to implement laws towards concreted legal events.

R.M. Sudikno Mertokusumo explained the reason why a judge needed to do legal founding is because a judge could not suspend or reject to verdict a case with reason due to the law is not completed or not clear enough.[52] Prohibition for a judge to reject a case also be regulated in Article 10 section (1) Indonesia Law Number 48 of 2009 concerning Judicial Power.

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[52] Adi Condro Bawono & Diana Kusumasari, "*Kapan dan Bagaimana Hakim Melakukan Penemuan Hukum*?" http://www.hukumonline.com/klinik/detail/lt4f0aa8449485b/kapan-dan-bagaimana-hakim-melakukan-penemuan-hukum-, accessed on 13th January 2017

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When the law is not completed or not clear enough to verdict a case, at that time the judge have to search and found the law (*rechtsvinding*). Then, the result of searching will be the law or the regulation if followed by the next judge or in other words to became jurisprudence.

There are two legal founding methods which divided by RM. Sudikno Mertokusumo, which are:[53]

1) Interpretation

Interpretation is a legal founding method which could give a clear explanation of the law texts so the scope of rules could be assigned which connected to certain phenomenon. This interpretation method is a tool to understand the true meaning of the laws. Interpretation is a legal founding method in terms of the rule is available but it's not clear enough to be implemented to the phenomenon. Interpretation itself could be done by some methods, which are:

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[53] *Ibid.*, accessed on 13th January 2017

a) Grammatical, is an interpretation which according to the daily language;

b) Historical, is an interpretation which according to the legal history;

c) Systematic, is an interpretation which to interpret the laws as the part of the whole legal system;

d) Teleological, is an interpretation according to the social purposes;

e) Comparative law, is an interpretation by comparing a pandect to the other's pandect; and

f) Futuristic, is an anticipative interpretation which be guided on the unenforceable laws.

2) Law construction

Law construction could be used by the judge in judging a case as the legal founding method if there is no rule or regulation that could be applied or regulate specifically on the phenomenon that

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occurred. Law construction could be done by logical thinking which by:

a) *Argumentum per analogiam* or analogy

Usually in analogy, different phenomenon but looks same kind or similar of phenomenon which has been ruled in the laws will be treated the same.

b) Law constriction.

On the law constriction, the general regulations implemented to the phenomenon or special legal relationship with explanation or construction by giving characteristics.

c) *Argumentum a contrario*

A contrario, is to interpret or explain the laws based on the resistance understanding between the facing concrete phenomenon and the phenomenon which has been ruled in the laws.

3. Legal approaches

There are some of the important regulations in Indonesia related to token synchronization cases and the resolutions are as following:

a. Indonesian Civil Code and Criminal Code

1) Article 1365 Indonesian Civil Code[54]

"Every unlawful act that causes damage onto another person obliges the wrongdoer to compensate such damage."

2) Article 55 Indonesian Criminal Code[55]

(1) As principals of a punishable act shall be punished:
   1. those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act;
   2. those who intentionally provoke the execution of the act by gifts, promises, abuse of power or of respect, force, threat or deception or by providing an opportunity, means or information.
(2) In respect to the provoker only those acts which have been deliberately provoked and their consequences shall be considered.

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[54] Trilingual Indonesian Civil Code, Article 1365, http://www.kuhper.com/Trilingual%20Indonesian%20Civil%20Code.pdf, downloaded on 23rd November 2016.

[55] Indonesia Criminal Code, Article 55, http://defensewiki.ibj.org/images/b/b0/Indonesia_Penal_Code.pdf, downloaded on 23rd November 2016.

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3) Article 362 Indonesian Criminal Code[56]

"A maximum imprisonment of five years or a maximum fine of sixty rupiahs punish any person who takes property, wholly or partially belonging to another, with intent to appropriate it unlawfully, shall being guilty of theft."

4) Article 378 Indonesian Criminal Code[57]

"Any person who with intent to unlawfully benefit himself or another, either by assuming a false name or a false capacity, or by crafty artifices, or by a web of fictions, induces someone to deliver any property or to negotiate a loan or to annul a debt, shall, being guilty of fraud, he punished by a maximum imprisonment of four years."

b. Indonesia Law Number 8 of 1999 concerning Consumer Protection[58]

1) Article 4:

Hak konsumen adalah:
a. *hak atas kenyamanan, keamanan, dan keselamatan dalam mengkonsumsi barang dan/atau jasa;*
b. *hak untuk memilih barang dan/atau jasa serta mendapatkan barang dan/atau jasa tersebut sesuai dengan nilai tukar dan kondisi serta jaminan yang dijanjikan;*
c. *hak atas informasi yang benar, jelas, dan jujur mengenai kondisi dan jaminan barang dan/atau jasa;*

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[56] *Ibid.*, Article 362, http://defensewiki.ibj.org/images/b/b0/Indonesia_Penal_Code.pdf, downloaded on 23rd November 2016.

[57] *Ibid.*, Article 378, http://defensewiki.ibj.org/images/b/b0/Indonesia_Penal_Code.pdf, downloaded on 23rd November 2016.

[58] Indonesia Law Number 8 of 1999 concerning Consumer Protection, Article 4, 5, 7, 19, 22, 23, 28.

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d. *hak untuk didengar pendapat dan keluhannya atas barang dan/atau jasa yang digunakan;*

e. *hak untuk mendapatkan advokasi, perlindungan, dan upaya penyelesaian sengketa perlindungan konsumen secara patut;*

f. *hak untuk mendapat pembinaan dan pendidikan konsumen;*

g. *hak untuk diperlakukan atau dilayani secara benar dan jujur serta tidak diskriminatif;*

h. *hak untuk mendapatkan kompensasi, ganti rugi dan/atau penggantian, apabila barang dan/atau jasa yang diterima tidak sesuai dengan perjanjian atau tidak sebagaimana mestinya;*

i. *hak-hak yang diatur dalam ketentuan peraturan perundang-undangan lainnya.*

It means that the consumers' rights are:

a. right of convenience and safety in consuming goods and/or services;

b. right to choose the goods and/or services and to get that goods and/or services according the exchange rate and condition including the agreed guarantee;

c. right of the correct information, clear, and honest about the goods and/or services condition and guarantee;

d. right to being accepted consumers' opinion and complaint towards the using goods and/or services;

e. right to get advocacy, protection, and consumer protection's dispute resolution effort worthily;

f. right to get development and consumer education;

g. right to be treated or served by correctly and honestly and not discriminative;

h. right to get compensation and/or substitution, if the received goods

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and/or services are not suitable with the agreement or not as it should be;

i. the rights which have ruled in the other regulations or laws.

2) Article 5:

Kewajiban konsumen adalah:

a. *membaca atau mengikuti petunjuk informasi dan prosedur pemakaian atau pemanfaatan barang dan/atau jasa, demi keamanan dan keselamatan;*

b. *beritikad baik dalam melakukan transaksi pembelian barang dan/atau jasa;*

c. *membayar sesuai dengan nilai tukar yang disepakati;*

d. *mengikuti upaya penyelesaian hukum sengketa perlindungan konsumen secara patut.*

It means that consumers are obligated to:

a. read or follow instruction and procedure in using the goods and/or services, for safety reason.

b. have a good faith in doing buying goods and/or services transaction;

c. pay according to the agreed exchange rate;

d. follow the efforts of resolution of legal dispute worthily.

3) Article 7:

Kewajiban pelaku usaha adalah:

a. *beritikad baik dalam melakukan kegiatan usahanya;*

b. *memberikan informasi yang benar, jelas dan jujur mengenai kondisi dan jaminan barang dan/atau jasa serta memberi penjelasan penggunaan, perbaikan dan pemeliharaan;*

c. *memperlakukan atau melayani konsumen secara benar dan jujur serta tidak diskriminatif;*

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d. menjamin mutu barang dan/atau jasa yang diproduksi dan/atau diperdagangkan berdasarkan ketentuan standar mutu barang dan/atau jasa yang berlaku;

e. memberi kesempatan kepada konsumen untuk menguji, dan/atau mencoba barang dan/atau jasa tertentu serta memberi jaminan dan/atau garansi atas barang yang dibuat dan/atau yang diperdagangkan;

f. memberi kompensasi, ganti rugi dan/atau penggantian atas kerugian akibat penggunaan, pemakaian dan pemanfaatan barang dan/atau jasa yang diperdagangkan;

g. memberi kompensasi, ganti rugi dan/atau penggantian apabila barang dan/atau jasa yang diterima atau dimanfaatkan tidak sesuai dengan perjanjian.

Businessmen are obligated to:

a. have a good faith in doing their business activity;

b. give true information, clear, and honest about the goods and/or services condition and guarantee, also giving explanation about how to utilize them, to repair, and maintenance;

c. treat or service consumers correctly, honest and not discriminative;

d. guarantee the produced and/or traded goods and/or services quality based on the goods and/or services valid quality standard provision;

e. give opportunity to the customers to test, and/or try the certain goods and/or services and give a guarantee on the produced or traded goods and/or services;

f. give compensation to the loss which caused by the traded goods and/or services utilization;

g. give compensation or substitution if the received or used goods and/or services are not accordance with the agreement.

4) Article 19:

(1) *Pelaku usaha bertanggung jawab memberikan ganti rugi atas kerusakan, pencemaran, dan/atau kerugian konsumen akibat mengkonsumsi barang dan/atau jasa yang dihasilkan atau diperdagangkan.*

(2) *Ganti rugi sebagaimana dimaksud pada ayat (1) dapat berupa pengembalian uang atau penggantian barang dan/atau jasa yang sejenis atau setara nilainya, atau perawatan kesehatan dan/atau pemberian santunan yang sesuai dengan ketentuan peraturan perundang-undangan yang berlaku.*

(3) *Pemberian ganti rugi dilaksanakan dalam tenggang waktu 7 (tujuh) hari setelah tanggal transaksi.*

(4) *Pemberian ganti rugi sebagaimana dimaksud pada ayat (1) dan ayat (2) tidak menghapuskan kemungkinan adanya tuntutan pidana berdasarkan pembuktian lebih lanjut mengenai adanya unsur kesalahan.*

(5) *Ketentuan sebagaimana dimaksud pada ayat (1) dan ayat (2) tidak berlaku apabila pelaku usaha dapat membuktikan bahwa kesalahan tersebut merupakan kesalahan konsumen.*

It means that:

(1) Businessmen should be responsible to give compensation towards damage, pollution, and/or consumer loss caused by consuming goods and/or services which have been produced or traded.

(2) Compensation which stated in the section (1) means could be by refunding or substituting goods and/or services which of one kind or equals to their value, or health treatment and/or giving compensation which appropriated with the laws that available.

(3) Giving compensation should be within 7 (seven) days after the transaction date.

(4) Giving compensation which stated in section (1) and section (2) didn't remove the possibility of criminal charges based on further verification about the fault element.

(5) Provisions as what have stated in section (1) and section (2) are not available if the businessmen could prove that the fault was happened due to the customers' fault.

5) Article 22:

"*Pembuktian terhadap ada tidaknya unsur kesalahan dalam kasus pidana sebagaimana dimaksud dalam Pasal 19 ayat (4), Pasal 20, dan Pasal 21 merupakan beban dan tanggung jawab pelaku usaha tanpa menutup kemungkinan bagi jaksa untuk melakukan pembuktian.*"

It means that verification to indicate whether there is a fault element in the criminal case as what explained in Article 19 section (4), Article 20, Article 21 will be the businessmen responsibility doesn't rule out the possibility for prosecutor to do the verification.

6) Article 23:

"*Pelaku usaha yang menolak dan/atau tidak memberi tanggapan dan/atau tidak memenuhi ganti rugi atas tuntutan konsumen sebagaimana dimaksud dalam Pasal 19 ayat*

(1), ayat (2), ayat (3), dan ayat (4), dapat digugat melalui badan penyelesaian sengketa konsumen atau mengajukan ke badan peradilan di tempat kedudukan konsumen."

It means that businessmen who rejecting and/or didn't give any response and/or didn't fulfill compensation of consumers demand as what explained in Article 19 section (1), section (2), section (3), and section (4), could be sued by institute of consumers case settlement or to file it to the court where located on consumers place.

7) Article 28:

"*Pembuktian terhadap ada tidaknya unsur kesalahan dalam gugatan ganti rugi sebagaimana dimaksud dalam Pasal 19, Pasal 22, dan Pasal 23 merupakan beban dan tanggung jawab pelaku usaha.*"

It means that verification to indicate whether there is fault element in the compensation claim as what explained in Article 19, Article 22, and Article 23 will be the businessmen responsibility.

c. Indonesia Law Number 11 of 2008 concerning

Electronic Information and Transactions[59]

1) Article 30:

(1) Any Person who knowingly and without authority or unlawfully accesses Computers and/or Electronic Systems of other Persons in any manner whatsoever.

(2) Any Person who knowingly and without authority or unlawfully accesses Computers and/or Electronic

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[59] Indonesia Law Number 11 of 2008 concerning Electronic Information and Transaction, Article 30, 31, 46, 47, https://www.bu.edu/bucflp/files/2012/01/Law-No.-11-Concerning-Electronic-Information-and-Transactions.pdf , downloaded on 1st December 2016.

Systems in any manner whatsoever with the intent to obtain Electronic Information and/or Electronic Records.

(3) Any Person who knowingly and without authority or unlawfully accesses Computers and/or Electronic Systems in any manner whatsoever by breaching, hacking into, trespassing into, or breaking through security systems.

2) Article 31:

(1) Any Person who knowingly and without authority or unlawfully carries out interception or wiretapping of Electronic Information and/or Electronic Records in certain Computers and/or Electronic Systems of other Persons.

(2) Any Person who knowingly and without authority or unlawfully carries out interception of the transmission of nonpublic Electronic Information and/or Electronic Records from, to, and in certain Computers and/or Electronic Systems of other Persons, whether or not causing alteration, deletion, and/or termination of Electronic Information and/or Electronic Records in transmission.

(3) Interception except from one as intended by section (1) and section (2) shall be interception carried out in the scope of law enforcement at the request of the police, prosecutor's office, and/or other law enforcement institutions as stated by laws.

(4) Further provisions on procedures for interception as intended by section (3) shall be regulated by Government Regulation.

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3) Article 46:

(1) Any Person who satisfies the elements as intended by Article 30 section (1) shall be sentenced to imprisonment not exceeding 6 (six) years and/or a fine not exceeding Rp600,000,000 (six hundred million rupiah).

(2) Any Person who satisfies the elements as intended by Article 30 section (2) shall be sentenced to imprisonment not exceeding 7 (seven) years and/or a fine not exceeding Rp700,000,000 (seven hundred million rupiah).

(3) Any Person who satisfies the elements as intended by Article 30 section (3) shall be sentenced to imprisonment not exceeding 8 (eight) years and/or a fine not exceeding Rp800,000,000 (eight hundred million rupiah).

4) Article 47:

Any Person who satisfies the elements as intended by Article 31 section (1) or section (2) shall be sentenced to imprisonment not exceeding 10 (ten) years and/or a fine not exceeding Rp800,000,000 (eight hundred million rupiah).

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d. Regulation of the Government of the Republic Indonesia Number 82 of 2012 concerning Electronic System and Transaction Operation[60]

1) Article 24:

(1) The Electronic System Operator shall conduct training to Electronic Systems to Users.

(2) Training as intended in paragraph (1) at least on the rights, obligations and responsibilities of all parties involved, and the procedures for filing a complaint.

2) Article 25:

Electronic System Operator shall submit information to the Electronic System User for at least:

a. Electronic System Operator identity;
b. objects in the transaction;
c. capability or safety of Electronic Systems;
d. procedures to use of the device;
e. terms of the contract;
f. procedures to reach an agreement; and
g. guarantee of the privacy and/or protection of Personal Data.

3) Article 27:

Electronic System Operator is obligated to protect its users and the public from harm caused by its operation of Electronic Systems.

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[60] Regulation of the Government of the Republic Indonesia Number 82 of 2012 concerning Electronic System and Transaction Operation, Article 24, 25, 27, 28, http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4902_PP_82_2012_e.html, accessed on 16th December 2016.

4) Article 28:

(1) Each person who works in the Electronic Systems Operation must secure and protect structure and infrastructures of Electronic Systems or information transmitted through the Electronic System.

(2) Electronic System Operator shall provide, teach, and train personnel in charge and responsible on the security and protection of structure and infrastructure of Electronic Systems.\

e. Regulation of Financial Services Authority Number 1/POJK.07/2013 concerning Consumer Protection Financial Service Sector[61]

1) Article 25:

Financial Services Business shall ensure the security of Consumer deposits, funds or assets placed under the responsibility of the Financial Services Business.

2) Article 38:

After receiving a Consumer complaint, the Financial Services Business must:

a. conduct a competent, truthful and objective internal examination of the complaint;

b. conduct an analysis to ascertain the legitimacy of the complaint; and

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[61] Regulation of Financial Services Authority Number 1/POJK.07/2013 concerning Consumer Protection Financial Service Sector, Article 25, 38, http://www.ojk.go.id/en/kanal/edukasi-dan-perlindungan-konsumen/regulasi/peraturan-ojk/Documents/Pages/OJK-Regulation-Concerning-Consumer-Protection-in-Financial-Services-Sector/POJK%20PK%202013%20%281%29_EN%283%29.pdf, downloaded on 16th December 2016.

c. convey an apology and offer redress/remedy or a rectification of the product and/or service, if the Consumer complaint is legitimate.

f. Regulation of Bank Indonesia Number 8/5/PBI of 2006 concerning Banking Mediation[62]

Article 2:

"*Sengketa antara Nasabah dengan Bank yang disebabkan tidak dipenuhinya tuntutan finansial Nasabah oleh Bank dalam penyelesaian pengaduan Nasabah dapat diupayakan penyelesaiannya melalui Mediasi perbankan.*"

It means that the legal dispute between customer and bank which due to the unfulfilled customers' financial demands from the bank could solve by banking mediation.

There are some law principles that also could be imposed to handle token synchronization cases as following:

a. Territoriality principle

Article 2 Indonesian Criminal Law which stated that: "The Indonesian statutory penal provisions are applicable to any person who is guilty of a punishable act within Indonesia."[63]

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[62] Regulation of Bank Indonesia Number 8/5/PBI of 2006 concerning Banking Mediation, Article 2, http://www.commbank.co.id/lib_ui/repository/doc/pbi8506.pdf, downloaded on 16th December 2016.

[63] Indonesia Criminal Code, Article 2, http://defensewiki.ibj.org/images/b/b0/Indonesia_Penal_Code.pdf, downloaded on 23rd November 2016.

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b. Reversal burden of proof principle

Reversal burden of proof principle or known as *Omkering van het Bewijslast*. This principle means that the burden of proof was not on the customers who consuming or using the goods and/or services, but to the businessmen instead.[64] Reversal Burden of Proof was stated in Article 28 Indonesian Law Number 8 of 1999 concerning Consumer Protection.

c. *Caveat emptor* principle

Caveat emptor principle means that without a warranty the buyer takes the risk or could be also the principle that a person who buys something is responsible for making sure that it is in good condition, works properly, etc.[65], as stated in Article 5 and Article 27 Indonesian Law Number 8 of 1999 concerning Consumer Protection.

d. *Caveat venditor* principle

Caveat venditor principle means that let the seller beware which is a counter to *caveat emptor* and suggests that sellers can also be deceived in a

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[64] Letezia Tobing, 2013, "*Tentang Sistem Pembalikan Beban Pembuktian*", http://www.hukumonline.com/klinik/detail/lt513ff99d6eedf/tentang-sistem-pembalikan-beban-pembuktian, accessed on 27th December 2016.
[65] Merriam-Webster, https://www.merriam-webster.com/dictionary/caveat%20emptor, accessed on 30th December 2016.

market transaction.[66] This forces the seller to take responsibility for the product and discourages sellers from selling products of unreasonable quality. Therefore the sellers have to beware towards the marketed goods and/or services. This principle is valid in Article 22 and Article 28 Indonesia Law Number 8 of 1999 concerning Consumer Protection.

e. *Lex specialis derogat legi generalis* principle

Lex specialis derogat legi generalis principle is a law principle which means that the more specific regulations or laws will rule out the more general regulations or laws.[67]

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[66] USLegal, https://definitions.uslegal.com/c/caveat-venditor/, accessed on 30th December 2016.

[67] Letezia Tobing, 2012, "*Mengenai Asas Lex Specialis Derogat Legi Generalis*" http://www.hukumonline.com/klinik/detail/lt509fb7e13bd25/mengenai-asas-lex-specialis-derogat-legi-generalis, accessed on 30th December 2016.

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