

# Mitigation of Legal Disputes on Business Contracts between Commercial Banks and Providers of Information Technology Goods and Services

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## Abstract

This research aims to translate Financial Services Authority Regulations into the clauses of business contracts between commercial banks and providers of information technology goods and services by harmonizing agreements with contractual law principles, especially to reach mutual agreements to mitigate legal disputes. The harmonization process starts from the planning, preparation, implementation, and contract termination stages. The research method used in this article is normative legal research, which aims to research, study, and analyze laws and regulations relating to banking, the OJK, and business contracts between banks and providers of information technology goods and services. This research will use several approaches, including a case approach, a statutory approach, and a conceptual approach. The results of this research emphasize the importance of banks providing standard business contracts that comply with the provisions in MRTI SEOJK to facilitate initial identification and the need for harmonization of clauses that require negotiation with information technology providers. In mitigation efforts, the Bank has considered to accept and control the risks after obtaining approval from management.

**Keywords:** *Legal Risk Mitigation, Business Contracts, Procurement of IT Goods and Services.*



## A. INTRODUCTION

The development of banking in Indonesia in the last five years has continued to grow even though the challenges faced have come and gone. The challenges in question include the outbreak of war, geopolitical turmoil, and the arrival of the COVID-19 virus, which developed into a pandemic that caused a weakening of the economy. All these challenges are not an obstacle for banking in Indonesia to continue actively contributing to its role in the economic sector (Matompo, 2020). The Bank's primary function is as a collector and distributor of public funds so that it can continue to advance the welfare of the Indonesian people. Banks can support the implementation of national development amidst all challenges, including technological developments, with both positive and negative impacts. Commercial Banks are developing rapidly in line with economic developments and advances in digital finance. Changes also influence the development of commercial banks in people's economic behavior, which leads to the digitalization of products and services to meet people's expectations (Pujiyono et al., 2020).

Commercial Banks need to have the ability to transform quickly towards digitalization. Time acceleration plays a vital role for banking companies in

determining their success in adapting to the era of digitalization (Purnama, 2019; N. A. Sinaga, 2019). There is a need to provide digital banking services that are reliable and increasingly accessible to the public or customers in the hope of increasing financial inclusion without knowing the limitations of time and place. It cannot be denied that in the era of Industrial Revolution 4.0, apart from the potential or opportunities for progress encountered by general banking companies, it is also not free from challenges in the form of the presence of competitors in financial services such as financial technology (fintech) and technology partners who continue to emerge with technological advantages (Steingold, 2022a).

Banking services provided digitally are currently available in various media or platforms to make it easier for the public or customers to carry out transactions independently without any involvement from Bank employees. Transaction activities can start from obtaining information, communicating with the Bank, registering and opening an account, banking transactions, purchasing bank products, investing, transacting with the e-commerce market, and closing the account. This digital banking service is not only related to the digitization of service processes and products but also changes people's mindset, which moves along with changes in people's behavior and needs (Novera & Utama, 2014; Sjaiful, 2015).

Banks must strengthen information and technology (IT) governance and risk management to accelerate digital transformation. Banking companies are encouraged to answer this challenge using IT game changers such as Open API, Cloud, Block Chain, AI, Super App, and Omni Channel. Banking companies should be encouraged to collaborate regarding technology and implement advanced digital banking to provide this facility.

Cooperation in procuring information technology goods and services between commercial banks and providers of information technology goods and services must be outlined as an agreement to bind themselves to each other and create rights, obligations, and responsibilities to fulfill them. The implementation of cooperation agreements between banks and information technology providers is regulated and supervised by regulators, including the OJK. This is stated in OJK Regulation Number 38 /POJK.03/2016 concerning Implementing Risk Management in the Use of Information Technology by Commercial Banks and SEOJK No.21/SEOJK.03/2017.

The information technology services procurement process is regulated in OJK Circular Letter Number 21/SEOJK.03/2017 concerning implementing risk management in the use of information technology by commercial banks. In Article 2 SE OJK No. 21/SEOJK.03/2017 states that policies, standards, and procedures for using information technology, as well as risk management guidelines for the use of information technology. When procuring information technology goods and services, paying attention to the conformity of specifications with needs, the impact on existing systems, after-sales technical support, the company's financial condition, completeness of documentation, escrow agreements, and training is necessary.

Implementing information technology risk management for commercial banks requires these banks to be able to carry out all processes related to the procurement of

information technology goods and services to run well and smoothly. To realize this, in business contracts between commercial banks and entrepreneurs of information technology goods and services, it is necessary to prepare mitigation steps for every potential risk that the Bank may face.

Implementing information technology risk management in procuring goods and services often faces various obstacles, including provisions that can indicate the existence of unclear norms and double interpretations in translating provisions issued by the OJK into contract clauses, thereby giving rise to disharmony (Dejuan-Bitria & Mora-Sanguinetti, 2021). This condition indirectly affects the bargaining position of banks. It slows down the process of procuring information technology goods and services, which results in difficulty reaching an agreement with the parties providing them.

Implementation in the field shows that banks need help synchronizing regulations issued by the OJK to synergize business contracts with providers of information technology goods and services. Apart from the challenge regarding the lack of clarity in the provisions that need to be implemented by the Bank, another challenge is the Bank's efforts to be able to implement these provisions into clauses that have the lowest risk but are challenging to negotiate with the providers of goods and services.

Due to this condition, efforts are needed from the Bank to mitigate legal disputes in formulating contracts between banks and providers of goods and services from the planning and preparation to contract signing stages. Based on these problems, the researcher intends to analyze and study the gaps between the regulations issued by the OJK and the business contracts carried out by commercial banks to find a solution. Researchers feel it is necessary to highlight the parties' position in business contracts for procuring information technology goods and services, which, in principle, need to be jointly guaranteed by law in a balanced manner. This is intended so that the business contracts still prioritize the principles of contract law and do not conflict with the provisions or regulations issued by the OJK regarding risk management. Given these problems, the researcher chose this research topic titled "Legal Dispute Mitigation in Business Contracts Between Commercial Banks and Information Technology Service Providers." Based on the background of the problem above, the main legal issue in this thesis is the ambiguity of norms in determining Information Technology Risk Management provisions regulated by the OJK. One of the impacts of SE OJK No. 21/SEOJK.03/2017 is the emergence of multiple interpretations, which then causes disharmony in making business contracts between Commercial Banks and Technology Service Providers.

In this thesis research, 2 (two) problems are proposed to be discussed, namely how to translate and express the rules issued by the OJK into business contract clauses between Commercial Banks and Information Technology Goods and Services Providers in order to protect banks from various forms of risk and how mitigating disputes or legal risks in business contracts between banks and entrepreneurs

procuring information technology goods and services starting from the planning, preparation, to contract signing stages.

## **B. LITERATURE REVIEW**

### **1. Business Contract Theory**

The dispute in the business contract in this research began with a disagreement in interpreting what was agreed on in the contract. Default, as explained in Article 1238 of the Civil Code, is a condition where one party is declared negligent in what has been agreed in the business contract. Default has juridical consequences; the party committed the default must bear the consequences of the losses incurred.

In this era of globalization, the business world is developing rapidly and is now unrestricted by time and space; developments occur at the national, regional, and international levels. To maintain order and protect the parties involved in business, business contracts are essential, with legal regulations to protect them in their business activities (Latorre, 2020). According to Civil Law, the term contract is referred to as Agreement (*overeenkomst*) as regulated in article 1313 of the Civil Code, which states that an agreement is an act by which one or more people bind themselves to one or more people. (Staatsblad) The term Contract comes from English, which is related to business. A contract is a legal relationship in the field of property/property between two or more people, which gives the right to 1 (one) party to obtain achievements and, at the same time, obliges the other party to fulfill the achievements. A contract is an action by two or more parties where each party must perform one or more achievements. The elements contained in the term contract include 1) the existence of an agreement (consensus), 2) The parties (legal subjects), 3) Achievement, 4) Giving rise to obligations, and 5) Certain things (objects).

### **2. Legal Dispute Mitigation Theory**

In implementing cooperation between Commercial Banks and providers of information technology goods and services outlined in the form of business contracts, the implementation can give rise to the potential for legal disputes. This is due to differences in understanding and disputes between the parties. Efforts are needed to mitigate legal disputes when carrying out business contracts (Leonard et al., 2020). According to Black Law's Dictionary, mitigate means "to make less severe or intense," which means to reduce so that it does not become more severe or intense. Mitigation can be interpreted as any effort to reduce risk. A legal dispute is a dispute that occurs between one party and another party due to differences in interests regarding the exact legal object, resulting in differences of opinion, quarrels, and disputes between the parties so that they are resolved according to the applicable legal provisions (S. Sinaga et al., 2020a).

Legal Dispute Mitigation Theory is to minimize the occurrence of disputes between parties entering into a business contract starting from the pre-contract stage (planning and preparation stage) until the end of the contract (implementation and termination stage of the business contract) without giving rise to disputes that can

lead to settlement before the court. With this mitigation concept, obtaining the most negligible impact or minor consequences will be possible (Iswantoro, 2021).

### **C. METHOD**

The research method used in this article is normative legal research, which aims to research, study, and analyze laws and regulations relating to banking, the OJK, and business contracts between banks and providers of information technology goods and services. This research will use several approaches, including a case approach, a statutory approach, and a conceptual approach.

The data used in this research are secondary and tertiary data, which were analyzed qualitatively. The juridical methodological steps that can be identified involve: 1) Analysis of OJK Regulations: The research begins with an in-depth analysis of the regulations and provisions issued by the OJK related to business contracts between commercial banks and providers of information technology goods and services; 2) Harmonization of Agreements with the Principles of Contract Law: The harmonization process is carried out by ensuring that the business contract is by the principles of contract law, in line with existing provisions in the OJK; 3) Negotiations and Agreements: Harmonization efforts involve negotiations between commercial banks and information technology providers to reach mutual agreements. Acceptance and understanding of risks that may arise is the focus, emphasizing proposed clauses from the Provider; and 4) Clause Risk Control: After an agreement is reached, the commercial Bank carries out risk control related to the contract clauses. This includes acceptance and control measures to manage risks and mitigate potential disharmonization that could lead to legal disputes.

### **D. RESULT AND DISCUSSION**

#### **1. Business Contract for Procurement of Goods and Services**

Dispute resolution is a resolution of problems. Contracts are a form of written Agreement where there is a view that the contract has a more specific or specific meaning than an agreement. An agreement is made and adhered to by parties with different interests, and then through negotiations, the results are expressed in the form of clauses of the Agreement (Effendi).

An agreement will bind one or more people to those who make it. Due to this event, a relationship is formed between the parties, called an engagement. This Agreement creates an agreement between the parties. Based on this, the relationship between an agreement and an agreement is that the Agreement gives rise to an obligation. The engagement then becomes the source of the Agreement made (Abd Jamil & Fathi, 2020a). An agreement or contract begins with differences or unequal interests between the parties, and a contractual relationship usually begins through a negotiation process. Therefore, through a contract, these differences can be accommodated and then regulated with the help of legal instruments so that they become binding for both parties (Holden, 2020).

In the scope of contracts, we also know contract law, which in English is called a contract of law. Contract law regulates various agreements related to legal regulations in society or a collection of legal rules that give rise to legal relations between the parties to the Agreement. Due to this, legal consequences arise for the parties who agree to the contract (S. Sinaga et al., 2020b).

As stated by M. Sjaiful, a contract or Agreement made by parties who have agreed can give rise to a legal relationship, both in written and oral form. Based on this, all parties who have agreed and are bound by the Agreement must obey and implement the contents of the Agreement (Ramadhani & Lubis, 2021). A contract is formed when, in a relationship between two parties, there is an agreement between them so that an agreement is then formed to be obeyed by all parties. The contract issued is a series of words that explain the Agreement and capabilities that have been agreed to by the parties (Hoffman & Hwang, 2021).

If we look at the meaning of a contract or an agreement, we need to examine the legal basis for the Agreement. As regulated in Book III of the Civil Code, namely regarding general provisions and special provisions regarding an agreement, it is said that *Verbintenis*, in the sense of the word engagement, has a broader meaning, namely Agreement. Book III generally regulates various engagements based on agreements or agreements. However, it also regulates legal relations based on unlawful actions (*onrechmatigedaad*) and those based on managing the interests of other people who did not previously obtain prior approval. (*zaak waarneming*) where both of them have no basis for Agreement or Agreement. It is further explained in Book III of the Civil Code regarding engagements that it is stated that there is a legal relationship between two people regarding property wealth where one party gives something to another with the demand that the other party will fulfill its obligations in exchange for something that has been given (Armour & Sako, 2020).

Referring to the types of contracts based on categories and various types of contracts based on expert opinions, if we review the specifics of Business Contracts, we can conclude that Business Contracts are included in the category of types of contracts based on subject matter. Business contracts can fall into several types, depending on their purpose and context. Some common types of business contracts include Sales and Purchase Contracts, Service Contracts, Rental Contracts, and Contract Contracts. However, it should be noted that business contracts can also involve elements of several types of contracts, depending on the specific needs and requirements of the business transaction.

One of the general business contracts is the Sale and Purchase Contract, which includes contracts for procuring goods and services. A goods and services procurement contract is an agreement between two or more parties to regulate the terms and conditions of procuring goods or services. This contract aims to provide legal clarity and protection for all parties involved in business transactions. Business contracts for procuring goods and services include several essential things, including Approvals and Agreements. Business contracts are based on an agreement between

the parties involved. The Agreement must be based on each party's free and conscious will without coercion or fraud (Sharifi et al., 2020).

The nature of business contracts for procuring goods and services can vary depending on the country, industry sector, and the parties' specific needs. Therefore, it is essential to obtain competent legal advice when drafting and executing business contracts. The expertise of the parties involved in business activities is significant, especially in making contracts, so essential matters related to rights and obligations that must be included in the Agreement or contract can be adequately stated. This is very important to prevent the parties from the potential for prolonged disputes or conflicts. When drafting a contract, paying close attention to the applicable provisions of the legislation, public order, customs, and morality is necessary, and it cannot be done arbitrarily (Contractor et al., 2020).

## **2. Business Contract for Procurement of Goods and Services**

Commercial banks are financial institutions that function as intermediaries between parties with surplus funds (customers or depositors) and parties needing funds (borrowers). Commercial banks provide various financial services such as accepting deposits, providing credit, transferring payment funds, and other financial services to the general public, companies, and other institutions. The definition of a commercial bank also involves the Bank's role as a liquidity manager in the economy. Commercial banks collect funds from customers through deposits and allocate these funds to provide credit to individuals, businesses, or other parties who need financing. Commercial banks can also provide services such as guarantee services, foreign exchange, and other investment products (Hill et al., 2021).

Commercial banks are regulated by the rules and regulations applicable in their respective countries, including Indonesia. The authorities responsible for supervising and regulating commercial banks in Indonesia are Bank Indonesia (BI), the Central Bank, and the Financial Services Authority (OJK), the supervisory body of Indonesia's financial sector. Commercial banks are essential in facilitating economic activities, smoothing the flow of funds, and providing financial services that support economic growth. They play a role in raising public funds, maintaining public trust in the financial system, and helping the economy by providing financial access to individuals, businesses, and other institutions.

The activities of banking institutions in general, according to their functions and business objectives, can be divided into 3 (three): central banks, commercial banks, and people's credit banks. Let us look specifically at commercial banks, by Bank Indonesia Regulation Number: 9/7/PB1/2007, concerning Changes in Business Activities of Conventional Commercial Banks to Commercial Banks Carrying Out Business Activities Based on Sharia Principles and Opening Bank Offices and based on profound Sharia principles. Its activities provide services in payment traffic.

### 3. Provider of Information Technology Goods and Services

A goods and services provider is an entity or individual that provides physical products (goods) or services to meet consumer or company needs. They can operate in various industry sectors and provide goods and services ranging from consumer goods to professional services.

Meanwhile, information technology (IT) uses computers, hardware, software, networks, and computer systems to collect, store, transmit, process, and analyze information. Information technology aims to increase efficiency, productivity, and communication capabilities in various sectors and fields, including business, education, health, government, and others. Information technology is essential for managing data and information and facilitating fast and safe access to digital resources.

Continuing from the above definition, procurement of IT goods and services refers to acquiring information technology products and services by an organization or entity. This process involves various steps: needs analysis, planning, vendor or provider selection, contract negotiation, and procurement project implementation. Procurement of IT goods and services can include hardware (computers, servers, mobile devices, routers, switches, cables), software (applications, operating systems), and IT services (data networks, technical support, maintenance).

The procurement process must be carried out carefully and transparently to ensure that the products and services acquired meet the organization's needs, meet quality and safety standards, and fit within the specified budget. Thus, procuring suitable IT goods and services can help organizations increase efficiency, competitiveness, and operational success in the digital era.

Dispute mitigation is an effort to reduce or overcome the negative impacts and potential escalation of disputes so they do not worsen. It includes steps or strategies to prevent, defuse, or resolve disputes more peacefully and constructively. Dispute mitigation aims to avoid lengthy and expensive legal processes and minimize tensions between the parties to the dispute.

Dispute mitigation steps can include open communication, mediation, negotiation, amicable resolution, and other more collaborative approaches than involving third parties or litigation in court. This approach focuses on finding mutually beneficial solutions and reaching agreements to satisfy all parties with the results. Dispute mitigation is often a better approach to finding a sustainable resolution and maintaining good relations between the parties involved (Bedir, 2020; Selden et al., 2020).

The following steps can be taken to resolve or mitigate disputes: (a) Communication and Mediation: Prioritizing open and honest communication between the parties involved can help find a point of Agreement. If necessary, using the services of a neutral mediator can help facilitate the negotiation process. (b) Negotiation and Peaceful Settlement: The parties involved can reach an agreement through negotiation and peaceful settlement without involving third parties or more complicated legal processes. (c) Arbitration: If negotiations are unsuccessful,

arbitration may be an option. Arbitration involves a neutral third party providing a binding decision for the disputing parties. (d) Litigation: If all attempts at peaceful resolution fail, the parties involved can choose litigation in court to seek justice and dispute resolution. (e) Clear Contracts: Using clear and comprehensive contracts at the start of a collaboration can help reduce potential disputes by establishing the rights and obligations of each party. (f) Risk Management: Proactively identifying and managing risks can help prevent disputes from arising or reduce their impact if they occur. (g) Regulatory Compliance: Ensuring all parties comply with applicable regulations and laws can help avoid disputes caused by rule violations.

It is always important to handle disputes wisely and prioritize peaceful methods and solutions to achieve a fair resolution and minimize the negative impact on all parties involved.

#### **4. Risk Management of Goods Procurement Disputes**

In banking, a risk is the possibility of something occurring, either anticipated or unanticipated, which will hurt the Bank's income and capital. It is necessary to implement risk management to identify, measure, and control risks that may occur. This brings benefits not only to the banking side but also to the banking supervisory authorities. The risks that can arise from this activity vary, ranging from legal, operational, financial, and compliance risks.

Risk management of disputes in procuring goods and services involves identifying, evaluating, mitigating, and monitoring potential problems that may arise during the procurement process. Maintaining transparency, following legal procedures, and communicating effectively with involved parties can reduce the risk of disputes.

In disputes over the procurement of goods and services, one of the risks that require attention to be mitigated is legal risk. In every activity of procuring goods and services, there is a bond of rights and obligations between the Bank and the Provider of goods and services, which will be stated as an engagement document. Legal risk in procuring goods and services is potential loss due to certain conditions, this risk can arise, one of which arises from legal claims and weaknesses in the juridical aspects (Hacker et al., 2020; Kreitner, 2021).

The absence of supporting legislation or weaknesses in an engagement that can support an existing theory, concept, or phenomenon that still requires further scientific development is one of the causes. In legal risk management, one of the efforts to anticipate these cases is ensuring that internal controls are implemented effectively.

#### **5. Risk Mitigation for Commercial Banks related to Alignment of OJK Clauses for IT Procurement Business Contracts**

This research discusses the forms of harmonization and mitigation carried out by Commercial Banks related to creating Information Technology procurement contracts that must comply with the provisions in OJK Circular Letter No. 21/SEOJK.03/2017 Implementation of Risk Management in the Use of Information

Technology. In procuring information technology goods and services, various agreements have been made with vendors, which need to be stated in the contract, including stating in detail the rights and obligations of each party.

The Agreement on rights and obligations in a contract is a legal consequence of a legal relationship created between the Bank as the user of goods or services and the information technology provider. These rights and obligations come into effect after the contract is signed by the parties to the Agreement, and from that moment, an agreement is born. Contracts for the procurement of goods and services need to fulfill the elements that must be present in a goods or services Agreement, including: 1) The subject has a role as the user of the goods or services; 2) Object has a role as a provider of goods or services. 3. Documents regulate the relationship between users of goods or services and providers of goods or services (Munawir, 2020; Steingold, 2022b).

Referring to SEOJK MRTI in the section related to the policy on the use of MRTI Technology service providers, it is stated that to maintain the security and effectiveness of the use of information technology service providers, one of the principles that commercial banks must follow is that every use of information technology service providers must be stated in a written agreement in order to keep the rights and obligations of both parties clear and well defined.

Before entering the process of determining the type of Agreement or business contract that will be formed, all parties involved in the information technology procurement process need to understand that each party involved carries out their roles and responsibilities properly according to applicable regulations so that bank operations run smoothly. can wake up. One of the risks that may occur when there is legal uncertainty in an information technology procurement process is if there are conditions such as if the information technology service provider experiences failure to provide services, violates legal regulations, or is unable to fulfill obligations by applicable regulations and laws. The law that applies in an information technology procurement business agreement or contract can influence the outcome of the dispute.

One of the purposes of agreeing with a commercial bank and a technology service provider in procuring technological goods or services is to obtain legal certainty and appropriate legal protection where there is a balance for the parties to the Agreement. In the process of agreeing, it is not uncommon for the parties not to pay much attention to its conformity with the applicable regulatory provisions, which can then influence the success of the Agreement or can even result in a loss or failure that must be borne by one of the parties.

The above is very likely to occur in the process of making contracts for the procurement of technological goods and services at commercial banks where there are provisions that must be understood and complied with by the regulator, especially in this research; these are related to provisions from the OJK regarding the implementation of information technology risk management. Suppose commercial banks and information technology service providers must fully understand what is regulated and required. In that case, implementation in the field can cause various

problems that can cause losses and even failure in implementing the Agreement to procure goods and services (Ghodoosi, 2020; Howell & Potgieter, 2021).

In a contract for procuring information technology goods and services at a commercial bank, the service provider needs to follow the provisions related to MRTI from the OJK per the contract clauses prepared by the Bank. Considering this condition, both parties must understand that the spirit of balance must be maintained in reaching a mutual agreement, which will be stated in the contract. "Evenwicht" means balance, which needs to be understood in everyday life as a condition where the distribution of burdens on two sides is balanced. (Dale) Balance is understood as a state of calm or harmony where the various attitudes that emerge do not dominate each other, or no one element dominates another.

## **6. Determination of Risk Mitigation Steps for IT Procurement Business Contract Clauses**

Commercial banks make optimal efforts to comply with OJK's MRTI provisions regarding implementing clauses in contracts with third parties. Contract standards have been prepared in such a way as to make it easier for commercial banks to prepare contract drafts that will be used in discussions with information technology service providers to ensure that the things that must be fulfilled in the OJK MRTI can be done adequately.

In the process, this only sometimes runs smoothly, especially when the information technology service provider is a company originating from abroad and is a company that has a contract that is valid globally. Especially for major players in technology, sole providers of goods or services produced, and only a few other companies can provide similar or better advantages for their products or services.

In conditions to make agreements with technology service providers, including companies from abroad and significant technology players worldwide. Commercial banks always try to fulfill the provisions required in the OJK MRTI and carry out various harmonizations to achieve this fulfillment. Several clauses repeatedly become obstacles in various negotiations for the preparation of contract clauses, including those related to (a) Ownership of source code; (b) Providing training to Bank personnel who are responsible for maintaining the software; (c) Guarantee from the vendor that the software does not contain back door that allows access by unauthorized parties to the Bank's systems and data; and (d) Own a fitness certificate from the Ministry of Communication and Information of the Republic of Indonesia.

This is where commercial banks carry out various efforts to carry out the harmonization necessary to ensure that contracts can still be implemented and agreed upon by both parties promptly so that the procurement process or project that must be carried out can be carried out by the predetermined time targets so that they can still meet business needs targets.

Based on all of this, the principle of balance can be seen and implemented as a point of harmonization of efforts to develop Indonesian contract law in response to the demands of modern conditions, which then becomes a path and filter for modern

legal ideas or institutions, whether originating from the Civil Law System, Common Law. The system and other legal systems are then processed to be incorporated into the Indonesian national legal system. In this way, a modern national treaty legal system will be created while maintaining what is the identity of the Indonesian nation (Abd Jamil & Fathi, 2020b; Ghodoosi, 2020).

Several things will be discussed that have often undergone lengthy discussions and negotiations with providers of information technology goods and services, especially with those whose companies come from abroad and have standard contracts applied globally with all their clients throughout the research. Commercial banks are obligated to fulfill what has been regulated in the OJK MRTI; on the other hand, providers of information technology goods and services have their considerations, justifications, and contractual standards.

The first thing that will be discussed is related to "Source Code Ownership," whose provisions and explanations are stated in the OJK MRTI and need to be fulfilled by commercial banks in implementing contracts and carrying out their operations. Commercial banks are required to have the source code from the Provider of information technology goods and services, so it is necessary to request the willingness of the Provider of information technology goods and services to submit the source code to the commercial Bank and include it in the contract that will be mutually agreed upon.

For several types of software procurement or software licenses, this condition is that procurement parties at commercial banks often experience problems when they have to stipulate clauses regarding source code as regulated in the OJK MRTI, which requires the source code to be fully accessible by the Bank for inspection, provision, and storage. Source code in the database, and also to check program integrity in the form of adequate control over the conversion from source code to object code to be implemented.

This is because the business partner, also called a reseller as the party contracting with the Bank, needs direct access to the source code owned by the manufacturer or original owner of the software or license. This often happens when procuring software licenses. At the end of the negotiations, the Commercial Bank, in this case, is willing to agree to accept that the Provider cannot provide the source code but asks to get access to the source code if, in the future, there is a condition where the Provider or principal cannot provide services anymore or if there is a need modification that the Provider cannot make and principal.

The second clause that requires harmonization is regarding the provisions for training the Bank personnel responsible for software maintenance. According to Gomes, training is any effort to improve a worker's performance on a particular job for which they are responsible or a job related to the worker. To be effective, training must usually include learning experiences, be a planned organizational activity, and be designed in response to identified needs. Training should be designed to realize the goals of individual workers. (Gomes)

If you look at the clauses determined by MRTI OJK, banks need to include a clause in the Agreement that reads, "HR training plan, both the number of people trained, the form of training and the costs required. The IT service provider must transfer knowledge to the Bank so that there are IT work unit personnel at the Bank who understand the IT used by the Bank, especially regarding the IT process flow and Database structure (Database of the system provided by the IT service provider." This aims to ensure that the Bank has sufficient capacity to ensure that after the information technology service provider has completed the procurement, the Bank can use the goods or services correctly and without problems. Information technology service providers, in this case, are generally only willing to provide unique training with a training plan, amount, and form of training with additional costs.

Commercial banks again carried out the harmonization of clauses in this case. Commercial banks in the negotiation process will look at the main objectives of the clauses intended in the OJK's MRTI and ensure that these objectives can be achieved even though the clauses stipulated by the OJK cannot be fully accommodated in the contract clauses that both parties will sign. The Bank optimizes negotiating clauses related to providing this training while fully realizing its importance and all the risks accompanying it if it is not carried out well.

The mutually agreed upon clause was that the Provider was willing to provide training. The form was stated to be knowledge transfer, which could also be interpreted as training. The transfer of knowledge that is carried out does not have to be in the form of a formal class, but the participants are Bank officers/employees who are required to understand, master, and be able to use the application. The material and time of the training generally run parallel to the time used by the information technology service provider when carrying out development or production or when deploying the application where the commercial Bank has appointed certain employees to accompany the information technology service provider in each process.

Another clause that will be discussed in the research is related to security in Chapter 2.3.2.9 in section number 3, which states that there must be a guarantee from the vendor that the software does not contain back doors that allow access by unauthorized parties to the system and data. Bank.

This clause is one of the clauses that are very difficult to implement; information technology providers object because they state that it is tough to provide guarantees that in the future, there will be no access from unauthorized parties to the application system and bank data even at the time of the application made until it is handed over to the Bank, they have carried out all security necessary to protect the application from unauthorized parties.

A backdoor is a software program installed by an attacker on a known system to facilitate further unauthorized access to that system for the attacker's benefit. Backdoors can be embedded in malicious Trojans. The purpose of installing a backdoor on a system is to give hackers access to the system at a time of their choosing. The key is that the hacker knows how to get in the backdoor undetected and can use

it to hack the system further and find important information (Jagannathan & Delhi, 2020; S. Sinaga et al., 2020c).

In this case, commercial banks are making optimal efforts to negotiate to get the best Agreement for both parties. In certain conditions, there are information technology service providers who expressly state that they cannot fulfill the standard clause requests proposed by commercial banks. The following are the standard clauses proposed by the commercial banks and the final clauses that were ultimately agreed to be included in the contract where the Provider of information technology goods disclaims all warranties, whether express, implied, statutory or otherwise, regarding services including, without limitation, express warranties or implied merchantability or fitness for purpose, non-infringement of third party intellectual property rights, uninterrupted use and any warranties that may arise because of trade usage, custom or transaction related. Without limiting the preceding, the Bank acknowledges that the Provider does not guarantee that the service will work uninterrupted, error-free, or free from harmful components.

The following clause is regarding the OJK MRTI clause, which requires ownership of a certificate of fitness from the Ministry of Communication and Information of the Republic of Indonesia as stated in Chapter 2.3.2.1 part b number 2) which reads: "About hardware, the Bank ensures that the hardware used must: obtain a certificate of fitness from the Ministry of Communication and Information of the Republic of Indonesia.

Regarding this clause, the Provider of information technology goods is not willing to expressly state the availability of a fitness certificate from the Ministry of Communication and Information of the Republic of Indonesia. Based on information obtained from providers of information technology goods, this has yet to be generally accepted, and there is no apparent socialization regarding the obligations in obtaining this fitness certification. Commercial banks are harmonizing OJK's MRTI clauses as follows by including the clause in the contract as follows: The Provider provides all its obligations under the Agreement with good quality and functions as it should by the quality and quality standards set by the government and applicable laws and regulations and by the specifications agreed in writing between the Provider and the Bank.

This clause is mutually agreed upon by information technology goods providers and bank providers without including any obligation to fulfill a certificate of fitness from the Ministry of Communication and Information of the Republic of Indonesia. Even though the Bank does not explicitly state the certificate, it has mitigated the contract clause by stating that the Provider of information technology goods must provide goods with quality standards that comply with the regulations set by the government and applicable laws and regulations and agree in writing regarding the specifications of the goods.

## **7. Mitigating Legal Risks for IT Procurement Contracts at Commercial Banks**

In this section, we will specifically discuss mitigating legal risks in information technology procurement contracts, especially after linking them to several facts regarding several challenges commercial banks face regarding implementing OJK's MRTI clauses in contracts for procuring information technology goods and services. As stated in PBI 5/8/2003 concerning the Implementation of Risk Management for Commercial Banks, legal risk is a risk that arises due to weaknesses in the legal aspect.

To mitigate disputes or legal risks in business contracts for procuring information technology goods and services that may occur between commercial banks and providers of information technology goods and services, every process must be carried out properly, starting from the planning, preparation, and contract signing stages. Based on the facts and conditions above, if a commercial bank considers that the procurement of goods and services must continue to be carried out and contracts, in this case, must continue to be formed, then the commercial Bank needs to decide on the risk mitigation that must be taken. In this case, the Bank needs to determine priorities for controlling mitigation measures based on the results of a comprehensive assessment by the Bank. Banks need to measure this risk based on the likelihood of the event, the extent of the possible impact, and ways to reduce this risk (Bartholomew, 2022; Yusnanto et al., 2019).

As previously explained, the Bank can take steps to overcome potential risks: (1) Accept: Management decides to accept the risk if the impact and level of possibility are still within the organization's tolerance limits. For example, applying risk acceptance criteria related to risk evaluation and treatment, such as assessing the final risk as "Low"; (2) Control: The organization decides to reduce the impact or possibility of risk occurring. For example, installing a firewall on a personal computer (PC) to prevent unauthorized access; (3) Avoid: The organization decides to avoid risk by not carrying out an activity or choosing another alternative activity that produces the same results. For example, not granting administrator access rights to users to avoid information security risks due to configuration changes and software installation made by users; (4) Transfer: The organization decides to transfer responsibility for implementing a process to a third party. Examples include insuring rooms or building facilities that have a risk of fire. Steps include measuring or assessing the level of possible events and impacts after handling residual risk.

## **E. CONCLUSION**

This research concludes that banks have provided standard contracts for several different contracts. Banks are looking for optimal solutions so that contracts can continue while adhering to the principles of balance and equality and mitigating legal risks in contracts for procuring information technology goods and services. The Bank considers management's willingness to face risks and the means that can be used as preventive or corrective control efforts. The Bank carries out mitigation steps in several stages of the contract. At the contract preparation stage, the bank coordinates and discusses with information technology providers regarding the use of contract

standards provided by the Bank. At the drafting stage, the clauses agreed to by both parties are included in the contract with a good and correct agreement structure. At the final stage, the contract will be signed by authorized officials from both parties. Based on the four available risk mitigation options, namely, accepting, controlling, avoiding, and transferring, the risk mitigation options taken by the Bank are accepting and controlling.

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