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Legal Dımensıons Of Lendıng By Dıgıtal Banks In Indonesıa

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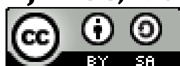
Abstract

The existence of digital banks today is a real need amidst the development of information technology and banking services which must be able to cover all levels of society. These banking services mainly consist of credit granting to the public. This research aims to analyze the extent to which the know-your-customer principle and the prudential banking principle are implemented for digital banks in credit granting. This research is normative juridical, using secondary data comprising primary legal materials in the form of statutory regulations, and secondary legal materials in the form of books, literature and academic journals. The research results show that know-your-customer principle and prudential banking principle that apply to commercial banks also apply to digital banks. However, there are no specific regulations for digital banks that regulate those, especially for lending activities that are full of risk. The research results also show that there are disparities in the application of know-your-customer and prudential banking principles by digital banks. It is recommended for the Financial Service Authority (Otoritas Jasa Keuangan/OJK) to regulate and supervise digital bank activities more intensively, especially in credit granting.

Keywords: digital bank, know-your-customer principle, prudential banking principle, credit granting.

1. INTRODUCTION

Digital bank activities contain various types of risks. Risk is generally defined as the probability or possibility of something different from what was originally expected (Darmawi, 2022). Risks inherent in bank activities include *market, operational, portfolio, and default risks* (S. M. Sihombing, n.d.). Lending activities are the bank's main business, and the risk of bad loans overshadows bank activities, including digital banks. Historical data shows that bad credit problems mostly cause bank collapses (Sitompul, 2005). In the midst of such



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circumstances, banks must make various efforts to mitigate risk, because the largest income from banks comes from lending.

Seeing the increasingly diverse and complex development of banking products and services in Indonesia, the greater and more varied the risks that overshadow its activities. This has resulted in the application of *Know Your Customer Principles (KYC*) and *Prudent Banking Principles* in banking activities becoming increasingly important (Abubakar & Handayani, 2017). In general, the role of banks is very strategic in supporting national development, amidst the position of banking as *a high risk industry*. So far, the existence of banks as intermediation institutions has not been replaced by other financial service institutions.

The government has anticipated bank operations risks, including lending activities. To some extent, the government has attempted to incorporate risk management measures at the statutory level under the law. Measures related to this include requiring banks to carry out Know Your Customer Principles and Prudence Principles in all their activities. However, the provisions on Know Your Customer Principles and Prudence Principles are more general in nature, in the sense that they have not specifically regulated specific measures that are suitable for digital banks. This article will analyze the extent of application of Know Your Customer Principles and Prudential Principles in lending by digital banks.

2. RESEARCH METHODS

The research method used is normative juridical through literature study. Research is carried out by collecting, studying and analyzing legal materials and relevant data to answer the problems studied (Ibrahim, 2005). The data used in this study are secondary data, obtained from primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto, 2006). Furthermore, the secondary data is analyzed qualitatively, and the results are presented descriptively, according to their relevance to the formulation of the problem under study.

The main research study is carried out through a statute approach and a conceptual approach regarding the scope of functions, duties, and authorities of digital banks that strive to provide services to the wider community that are faster and can be reached without distance constraints. The focus of the research is focused on the *issue* of the extent to which digital banks can apply Know Your Customer Principles and Prudence Principles which are at the heart of banking activities in accordance with the mandate of the law, especially those

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related to lending. This research uses data analysis techniques with deductive logic, by explaining a general thing then drawing it into a more specific conclusion (Ali, 2021).

3. RESULTS AND DISCUSSION

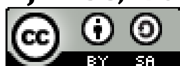
3.1 The Need for Know Your Customer Principles

Referring to Article 6 and Article 7 of the Banking Law, commercial banks' business activities are very broad and varied, ranging from raising funds, distributing funds in the form of credit, carrying out payment system activities, issuing and carrying out securities transactions, conducting factoring activities, custody service activities, and various other activities. The main step that banks must take in each of the above activities is to apply Know *Your Customer (KYC*) Principles, without exception. This Know Your Customer Principle is part of the Precautionary Principle (Putra & Widjaja, 2018).

Policies regarding Know Your Customer Principles at each bank are set forth in the relevant bank Guidebook by referring to the Financial Services Authority Regulations (POJK) and Bank Indonesia Regulations (PBI). In general, the Guidebook of each bank contains, among others, customer acceptance policies, policies and procedures for monitoring customer transaction accounts, as well as risk management policies and procedures inherent therein (Oktaria, 2019; Sukarini & Juliastuti, 2021). It can be mentioned that the application of Know Your Customer Principle is the initial door to the implementation of the Precautionary Principle (Dona et al., 2023).

In PBI No. 3/10/PBI/2001, it is clarified about Know Your Customer Principles as principles applied by banks to find out customer identity, monitor customer transaction activities, including reporting suspicious transactions. Suspicious financial transactions include (i) financial transactions that deviate from the profile, characteristics, or habits of the transaction patterns of the customer concerned, (ii) financial transactions by customers that should be suspected to be carried out with the aim of avoiding reporting transactions that must be carried out by the bank, and (iii) financial transactions carried out or canceled using assets allegedly derived from the proceeds of criminal acts.

Know Your Customer Principles must be carried out on all bank activities listed in Article 6 and Article 7 of the Banking Law mentioned above. Of course, among the activities listed in these articles, banks have preferences regarding the application of the level or intensity of Know Your Customer Principles which can be different for each bank activity and prospective customers. For prospective customers who have previously had business relations with bank subsidiaries, the level of application of Know Your Customer Principles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for prospective customers will be looser than other prospective new customers. It is undeniable that most of the bank's activities and the most vulnerable to risk are lending activities, and therefore banks need to emphasize Know Your Customer Principles in analyzing credit applications from each prospective debtor customer.

3.2 Precautionary Principles in Lending

Article 2 of the Banking Law clearly states this Precautionary Principle, stating that Indonesian banks in conducting their business activities are based on Economic Democracy using the Prudential Principle. As mentioned earlier, bank activities are fraught with risk, because most of their activities rely on entrusted funds from the public, both in the form of savings, current accounts and deposits. The security of funds deposited by customers to the bank needs to be maintained in such a way. Banks must be able to convince the public that the deposits entrusted to them will be safe and can provide benefits for depositor customers (Sanjaya et al., 2016). Bank activities that emphasize the Prudential Principle and industrial activities in the capital market that emphasize the *Full Disclosure Principles*, none other than aimed at providing legal protection for customers or investors (J. Sihombing, 2009). The difference in dimensions carried out by the two institutions is that if the application of the Prudential Principle by banks tends to emphasize defensive and closed measures, while the application of the Open Principle emphasizes transparent disclosure of facts so that parties who will make investment decisions will not be deceived (J. Sihombing, 2012).

The Precautionary Principle is a principle or principle that emphasizes that banks in carrying out their functions and business activities must be prudent in order to protect public funds entrusted to them (Usman, 2001). The Prudential Principle emphasizes that banks in collecting and distributing funds must act selectively, with the intention that banks are always in good health in carrying out their business, and comply with legal provisions and norms applicable to banks (Sukarini & Juliastuti, 2021). The regulation on the Prudential Principle is contained in Article 29 paragraphs (2) and (3) of the Banking Law, which basically contains provisions necessary to ensure the survival and sound management of banks, which are able to maintain public trust, and as one of the driving factors for progress for the economy (Hakim, 2015).

The Precautionary Principle is not only the center of attention of implementing banks, but also the domain of OJK. This relates to the function of the institution as an institution authorized to regulate and supervise the financial services sector, mainly being taken into consideration in granting licenses and supervision by looking at the extent to which each

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bank has applied the Precautionary Principle in its operational activities (J. Sihombing, 2009, 2011, 2012). The Precautionary Principle in providing credit can be translated into 2 (two) understandings. The *first understanding* is that the Precautionary Principle is related to the performance problems of prospective debtor customers, and therefore before credit is granted, banks must first investigate the quality of prospective debtor customers. The *second* understanding is that the Precautionary Principle relates to the existence of collateral to pay debtors' debts, when debtors in the future cannot pay off their debts as agreed (Darwance, 2017).

The purpose of implementing the Prudential Principle in every phase of bank activities is also intended so that the bank is always in good health, so that the bank's obligations to third parties can be fulfilled without a hindrance (Podung, 2016). Therefore, the implementation of the Prudential Principle is important to realize a sound, strong and robust banking system (Setiadi & Januarita, 2019). According to St. Remy Sjahdeini, the Precautionary Principle must be implemented by the bank not only because it is connected with the bank's obligation not to harm the interests of customers who entrust their funds to the bank, but also because of the bank's privileged position in the midst of society, namely as part of the monetary system that concerns the interests of all members of the public who are not only depository customers of funds at the bank (Sjahdeini, 1993).

After the monetary crisis that hit Indonesia in 1998/1999, the urgency of the Precautionary Principle was felt to be increasingly important. Kusumaningtuti stated that after the last banking crisis, banking regulation and supervision need to put more emphasis on the Prudential Principle which refers to the *Base Core Principles* of 1998/1999 (SS, 2009). These provisions include, among others, tightened loan classifications, as well as arrangements for bad debtor reserves and improved collateral assessments. In addition, Kusumaningtuti mentioned that debtor debt restructuring needs to be done more selectively and the need to require banks to publish their financial statements (SS, 2009).

From the description mentioned above, it can be stated that the substance of the provisions of the Prudential Principle in lending is for banks to be more selective and prudent in disbursing credit by taking into account the prospect of financing, business feasibility, supervision and sustainable development of banking institutions. This is to prevent banks from having problematic loans. Statutory provisions require banks to maintain the ratio of bad loans within the control range set by OJK. Significant bad loans will worsen the bank's *Capital Adequacy Ratio (CAR*), and will ultimately decrease the overall health of the bank. It is undeniable that as a consequence of the credit assessment process

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that must pay attention to the Prudential Principle, it can result in customers feeling that bank services are relatively slow (J. Sihombing, 2012). Therefore, banks are required to improve service quality by making breakthroughs, without sacrificing the Precautionary Principle.

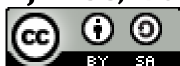
In the Explanation section of Article 25 paragraph (1) of Law No. 23 of 1999 concerning Bank Indonesia (Bank Indonesia Law) which has been amended by Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law), it is stated that banking regulations containing the Prudential Principle aim to provide signposts for the implementation of banking business activities in order to realize a sound banking system. Therefore, the laws and regulations on the Prudential Principle stipulated by Bank Indonesia in the future should ideally also refer to international standards (Santoso, 2023).

3.3 Application of Know Your Customer Principles &; Prudential Principles in Credit Distribution by Digital Banks

1. Nature of Digital Bank Activities

There are several conditions that digital banks must have to be allowed to operate in Indonesia. *First*, it must have a business model that uses innovative and safe technology in serving the needs of its customers. *Second*, have an adequate risk management unit. *Third*, digital banks are obliged to contribute to the development of the digital financial ecosystem and financial inclusion. With inclusive financial services, it means that digital banks are obliged to provide services that can reach the wider community throughout the archipelago. This means that digital banks are expected to continue to provide maximum banking services, including to customers who live in even rural residential areas.

Digital banks can be established as new banks, or are part of commercial banks/conventional banks. In Article 7B paragraph (1) of the Banking Law as amended by the P2SK Law, it is stated that in carrying out its business activities, commercial banks can operate as digital banks. From the contents of Article 7B above related to the activities of commercial banks listed in Article 6 of the Banking Law, it appears that all activities that are allowed to be carried out by commercial banks can be carried out by digital banks. But of course, digital banks will not penetrate all commercial bank activities, but will focus more on services that are economically more profitable and effective for them. Strictly speaking, digital banks only carry out banking activities that provide added value for the digital bank.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One of the characteristics of a digital bank is that if commercial bank services are carried out through physical interaction during working hours, digital bank services are presented through digital devices so that they can be accessed anytime and anywhere, without being tied to working hours. The difference in services provided by digital banks with those provided by commercial banks can be seen from the point of view of target customers, interest rates, and variations of services provided. Digital banks are more targeting the retail market, especially millennials or other individuals who are familiar with technological devices. Ideally, digital banks are also able to be slightly more competitive in providing deposit rates and lending rates, compared to those offered by commercial banks. However, please note that the provision of deposit interest rates by digital banks needs to comply with the maximum guarantee interest rate stipulated by the Deposit Insurance Corporation (LPS). If it is violated, it will result in customer deposits to digital banks not guaranteed by the institution.

OJK Regulation No. 12/POJK.03/2021 contains provisions for commercial banks that will have digital banks, where commercial banks must meet the following requirements:

a. Have a minimum paid-up capital of Rp. 10.000.000.000.000,- (ten trillion rupiah).
b. Apply for approval in principle to establish a digital bank while depositing at least 30% capital or Rp. 3,000,000,000,000,000 (three trillion rupiah).
c. Business licenses in order to carry out bank activities must be Indonesian Legal Entities (BHI).

The above provisions are designed in such a way that digital banks that are expected to play an important role in serving many people in the future will be stronger financially. Juridically, the legal form of digital banks is also determined to be subject to Indonesian law, which is intended to anticipate legal problems that may arise in the digital bank in the future. From POJK No. 12/POJK.03/2021 mentioned above, it can be seen that the rules in it are intended for commercial banks that will have units in the form of digital banks. Some examples of digital banks owned by commercial banks include Wokee owned by PT. Bank Danamon Indonesia Tbk, Jenius owned by BTPN, Bank Jago owned by PT. Bank Jago Tbk, Digibank owned by DBS, Blu owned by PT. BCA Digital Bank, PermataME, owned by PT. Bank Permata Tbk, Danamon Save owned by PT. Bank Danamon Indonesia Tbk, TMRW owned by PT. Bank UOB Indonesia, Neobank owned by PT. Bank Neo Commerce (BNC), Line Bank owned by PT. Bank KEB Hana Indonesia, as well as Superbank owned by PT. Super Bank Indonesia.

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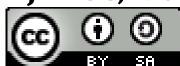
In Article 7B paragraph (3) of the Banking Law and the P2SK Law, it is stated that further provisions regarding digital banks are delegated to the OJK as outlined in the form of POJK, after first being consulted with the DPR. What is meant by the DPR in this provision is a permanent instrument of the DPR, namely the Commission whose duties and authorities concern the fields of finance, banking, and development planning.

2. Implementation of Know Your Customer Principles Online

As mentioned above, the principle of knowing customers is very important for the activities of commercial banks. The same is also important to be guided by digital banks, including if they are going to channel credit. Seeing the activities of digital banks that do not make direct contact with prospective debtor customers, the principle of knowing customers applied by commercial banks cannot be applied to the same extent by digital banks. Manual verification procedures are unlikely to be implemented properly in the midst of rapid changes in the field of digital banking service technology. However, these obstacles can actually be overcome by digital banks, because the principle of knowing customers can be done both *offline* and *online* (*e-KYC*). The use of *e-KYC identity verification* can also be utilized by insurance companies, and *Fintech* companies engaged in *peer to peer lending*.

Article 11 paragraph (1) of POJK No. 12 of 2018 concerning Requirements for Commercial Banks to Organize *Digital Lending Services* requires banks to (i) identify customers or prospective customers, and (ii) verify information and supporting documents for customers or prospective customers. Furthermore, in verifying with hardware and software, banks must pay attention to the data authenticity factor. In the event that the bank conducts verification without face-to-face, the bank is required to apply the characteristic factors inherent in prospective customers to be able to convince themselves of the authenticity of the document.

The principle of knowing customers *online* can be applied by digital banks through *digital onboarding*. Through this procedure, there is no one-on-one involvement between banks and prospective customers, but rather meetings between *users* and information service providers through available systems. Verification will be carried out on the data desired by the system, which is considered to be able to guarantee valid evidence that the *user* is a genuine person, human, user, customer, and has a physical form as a human or at least a legal and legitimate entity. When there is digital contact for the first time between the bank and the customer, there is a menu in the system that contains the data needed by the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digital bank to find out important information related to customer bona fides and the feasibility of credit distribution for them.

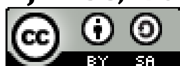
Through *online* channels, each party who uses these services only needs to upload documents and fill in the required information in the *online* form. If the necessary steps have been implemented properly, *identity verification* in this process can be completed quickly and very practically. The use of *digital onboarding* can (i) cut operational costs, and reduce errors due to *data entry*, and (ii) increase business efficiency. However, *digital onboarding* will only be successful if the process can be carried out quickly and efficiently.

In providing application-based credit, digital products demand protection for banks, considering that lending is carried out without collateral, so it is important for banks to protect themselves against possible risks. Therefore, it is very important for digital banks to apply Know Your Customer Principles. This needs serious attention, because inpractice, it is not uncommon to find that the requirements for providing information technology-based credit only require an Identity Card (KTP) without any collateral in any form (Anggraini & Gunandi, 2021). In addition to being a new breakthrough in banking services, the distribution of *application-based* online loans (*digital lending*) by banks to the public can be hampered by the disparity in the application of *fundamental lending* principles, especially the Prudential Principle carried out digitally by banks in disbursing loans without collateral (Susilo & Gultom, 2022).

3. Implementation of the Principles of Caution On-Line

Credit disbursed by banks carries great risks. Therefore, banks must pay attention to sound credit principles. Steps that can be taken by banks in creating sound credit, among others, through (i) not providing credit without a written agreement, (ii) not providing credit to businesses that have been calculated to be unsound and will cause losses to the bank, (iii) not providing credit for the purchase of shares and working capital in stock trading, and (iv) not providing credit beyond the maximum limit of lending (Mulyati & Dwiputri, 2018).

To explore information about the bona fides of prospective borrower customers, existing provisions require tracing through the Financial Information Service System (SI-LK) provided by OJK, and digital banks can take advantage of that access. In Article 18 paragraph (2) of POJK No. 64/POJK.03/2020 concerning Reporting and Request for Debtor Information Through the Financial Information Service System, it is stipulated that requests for debtor information to OJK can be made digitally through the OJK information system. Digital banks

 Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

must open networks to have access to the financial information service system provided by the OJK.

The provisions of Article 8 of the Banking Law, whose substance states that in providing credit, commercial banks must have confidence based on an in-depth analysis of the intentions and ability and ability of debtor customers to pay off their debts, also applies to digital banks. The substance of Article 8 of the Banking Law above basically contains that banks must apply Principle 5 *Cs,* namely *character, capacity, collateral, capital,* and *condition of economy* (Agustini et al., 2021). Likewise, the provisions contained in Article 29 paragraph (3) of the Banking Law state that in providing credit or financing based on Sharia Principles and carrying out other business activities, banks are obliged to take ways that do not harm the bank and the interests of customers who entrust their funds to the bank.

However, digital banks must be able to analyze the feasibility of credit applications submitted by customers, using data obtained from filling in forms that have been submitted by prospective customers digitally when submitting credit applications. In this case, digital banks are required to create a standard formula that can analyze creditworthiness by looking at the necessary elements as required by laws and regulations. Associated with the provisions of digital banks that must avoid providing credit to prospective customers who are considered unhealthy, it has been implied that it has been done at the time of assessing the feasibility of the credit application above.

At the last stage of applying the precautionary principle in providing credit digitally is the approval of the amount of credit limit to be given to prospective customers. The approved credit limit will be influenced by the results *of pre-screening* and *credit scoring* obtained through verification with software on the completeness and authenticity of data and identity, length of use of mobile phone numbers, social media, and psychometric analysis results (Agustini et al., 2021). Unlike credit limit approval at commercial banks which require tiered approval conditions, credit limit approval by digital banks is only in one hand, namely a system built to assess the feasibility based on *scoring*. This is the uniqueness of the credit limit approval set by digital banks. Therefore, it can be understood that the target market for lending by digital banks is generally small and retail customers.

Regarding credit agreements that must be made in writing, in digital banks, this is realized through credit agreements made electronically. The electronic credit agreement is designed by the bank itself and the customer has no choice but to sign the agreement electronically. The existence of this electronic signature is valid and recognized by Indonesian law as long as it meets the 6 (six) conditions contained in Article 11 paragraph

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(1) of Law No. 19 of 2016 *jo* Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) (Fauzan, 2023). The six conditions are (i) electronic signature generation data is related only to the signatory, (ii) electronic signature generation data in the electronic signing process is only in the power of the signatory, (iii) any changes to the electronic signature that occur after the time of signing can be known, (iv) any changes to electronic information related to the electronic signature after the time of signing can It is known, (v) there are certain means used to identify who the signatory is, and (vi) there are certain ways to indicate that the signatory has given consent to the relevant electronic information.

In reality, digital banks do not yet have specific regulations that discuss lex *specialists* regarding the regulation of digital banks themselves, because they are still based on regulations on banks in general. The position of digital banks is not regulated separately in law-level regulations, even though it has been mentioned in the P2SK Law. The absence of specific laws for digital banks including their lending activities creates a legal vacuum at the legal level, even though the role of digital banks is very important today. The scope of PBI and POJK basically only regulates the interests of banks and only binds banks (Supramono, 1995). Juridically, many people are not bound by the PBI and POJK, because they are not laws (Supramono, 1995).

However, bank activities that are full of the above risks are anticipated by the relevant authorities by inserting legal rules to minimize these risks in the Banking Law. Through the provisions stipulated in Article 29 Paragraph (2) and Paragraph (3) of the Banking Law, it is stipulated that: "Paragraph (2) states that banks are required to maintain the level of bank health in accordance with capital adequacy provisions, including asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the bank's business, and must conduct business activities in accordance with the prudential principle. Paragraph (3) states that in providing credit and conducting other business activities, the bank must take measures that do not harm the bank and the interests of customers who entrust their funds to the bank."

In maintaining the bank's health level which is closely related to the implementation of the Prudential Principle, digital banks are required to conduct *self-assessment* to identify problems that may arise related to their activities. The results of the *self-assessment* can be used as one of the inputs in implementing business strategies in the future (Elias, 2004). Regulation and supervision based on the Prudential Principle that are not seriously implemented such as easing the application of prudential provisions in lending, coupled with

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insufficient time and authority to assess credit applications, often cause the quality of bank credit portfolios to be unhealthy (SS, 2009).

4. CONCLUSION

The existence of digital banks today is a real need to serve the need for banking services in the midst of the development of information technology and banking services that are able to cover all levels of society. Of course, digital banks carry out bank functions and activities that are profitable and appropriate for them. Lending is one of the services provided by digital banks to the wider community.

Digital banks also face risks, and must be able to mitigate those risks. Know Your Customer Principles and Prudence Principles must be applied by digital banks in assessing the eligibility of prospective debtor customers. Know Your Customer Principle via *identity verification* is carried out through *digital onboarding*, while the Precautionary Principle is applied by designing the necessary data in the application menu so that it can lead to the application of *the 5 C's of credit.* The approved credit limit will be influenced by the results *of pre-screening* and *credit scoring* obtained through verification with software on the completeness and authenticity of data and identity, length of use of mobile phone numbers, social media, and psychometric analysis results.

The absence of statutory-level provisions and the lack of derivative regulations below that specifically regulate digital bank activities result in disparities in the application of Know Your Customer Principles and Prudential Principles, which have the potential to cause losses to the digital banking industry. It is recommended that OJK more intensively regulate and supervise the activities of digital banks, especially in lending. The laws and regulations regarding the Precautionary Principle set by the OJK should ideally also refer to international standards, so that digital banks in Indonesia can grow strongly and healthily in the future.

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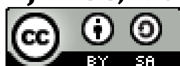
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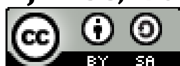 Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.