



Legal Protection for Financial Technology Services from a *Maqashid Syariah* Perspective

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Abstract: Fintech currently developing in Indonesia is fintech peer to peer lending or what is usually called fintech lending. This fintech company uses data as one of the conditions for becoming a user of this fintech service to carry out transactions on the Fintech application. However, there are no statutory regulations governing information technology-based financial services business activities. The focus of this research problem is how to protect Fintech law in Indonesian legislation **and** legal protection from the perspective of *Maqashid Syariah*. The purpose of this research is to find out how fintech legal protection is **and** to find out fintech legal protection from the *Maqashid Syariah* Perspective. This research method uses literature study from various literature. The results of this research are that legal protection is provided by OJK Number 77/POJK.01/2016, namely regarding Information Technology-Based Money Lending **and** Borrowing Services, here in after referred to as POJK LPMUBTI **and** is contained in the Financial Services Authority Circular Letter Number 2/SEOJK.07/2014. From the perspective of *Maqashid Syariah* Legal Protection to protect *Ad-Din, An-Nafs, An-Nash, Al-Aql, Al-Mal*.

Keywords: *Financial Technology; Supervision; Regulations*

Absrak: Fintech yang sata ini berkembang di Indonesia adalah fintech peer to peer lending atau yang biasa disebut dengan fintech lending. fintech ini perusahaan menggunakan data data sebagai salah satu syarat untuk menjadi pengguna layanan fintech ini untuk melakukan transaksi di aplikasi Fintech. Namun Sampai dengan saat ini, belum ada peraturan perundang-undangan yang mengatur mengenai kegiatan bisnis layanan jasa keuangan berbasis teknologi informasi, fokus masalah penelitian ini yaitu bagaimana perlindungan hokum Fintech dalam perundangan-undangan di Indonesia dan Perlindungan Hukum dalam persefektif *Maqashid Syriah*. Tujuan penelitian ini untuk mengetahui bagaimana perlindungan hokum fintech dan juga mengetahui perlindungan hukum Fintech dalam Persefektif *Maqashid Syariah*. Metode penelitian ini menggunakan studi pustaka dari berbagai literatur. Hasil dari penelitian ini yaitu Perlindungan Hukum diberikan oleh OJK Nomor 77/POJK.01/2016 yaitu tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi yang selanjutnya disebut POJK LPMUBTI serta terdapat dalam Surat Edaran Otoritas Jasa Keuangan Nomor 2/SEOJK.07/2014. Dalam persefektif *Maqashid Syriah* Perlindungan Hukum guna menjaga Ad-Din, An-Nafs, An-Nash, Al-Aql, Al-Mal.

Kata Kunci: *Financial Technology; Pengawasan; Regulasi.*

■ Introduction

Digital technology is a new innovation in all economic activities. This can impact trade, agriculture, and especially, finance. Financial Technology, or Fintech, is a growing field. This is the latest innovation today. Financial technology is a company that focuses on providing financial service concepts that use modern software and technology. Fintech is currently gaining attention globally as a technology that will enable companies to compete in the twenty-first century. Today, governments around the world are taking notice of the difficulties and establishing policies to support the advancement of Fintech.¹

One of the impacts influenced by the development of information technology is the presence of a business model in the financial sector, namely Financial Technology (fintech). Financial Technology (fintech) is defined as a form of business that uses information technology to support the provision of financial systems and services more effectively and efficiently.²

Fintech that is currently developing in Indonesia is fintech peer to peer lending or what is usually called fintech lending. In POJK No. 10 of 2022, it is explained that fintech lending is the provision of financial services for bringing together funders and recipients of funds in conducting conventional funding or based on sharia

principles directly through an electronic system using the internet.

With this fintech, companies use data as one of the conditions for becoming a user of this fintech service to carry out transactions on Fintech applications.

However, to date, there are no statutory regulations governing information technology-based financial services business activities.³

Whereas protection privacy and privacy data is priority, Lots countries that have issued and stipulated regulations regarding legal protection for fintech, but in Indonesia itself, there are no regulations regarding financial technology maximum. This means that from a legal perspective, Indonesia is still relatively weak in its efforts to protect consumer privacy.

Even though with there is legal certainty minimize risks, and can also provide a legal umbrella for consumers or user, either borrower or giver loan.

Based on background behind the, In this research the author formulates The problem is how to protect it laws against financial consumers technology based on regulations legislation Indonesia And regulation with Maqhashid Sharia

Objective study This is For know arrangement law about how to protect financial technology based on laws and regulations and understand the relationship between financial technology in the perspective of Maqshid Syariah.

The research method used in this paper is by using literature studies obtained

¹ Rohmatun Nafiah, "Analysis of Sharia Financial Technology (Fintech) Transactions from the Maqashid Syariah Perspective," *Journal of Sharia Economics and Banking* 6 No. 2 (December 2019): 168.

² Misbakhul Ulum, "Protection of Personal Data in Implementing Sharia Fintech Lending (Study of Jasser Auda's Thoughts on Maqshid Al-Syariah)," *El-Hisbah (Journal of Economic Law)* Volume 3 Number 1 Year 2023 (nd).

³ "POJK Concerning Information Technology-Based Money Lending and Borrowing Services," *Fintech Explanation* (blog), December 2016, <https://ojk.go.id/id/regulation/Pages/POJK-tangan-Layanan-Pinjam-Meminjam-Uang-Based-Information-Technology.aspx>.

from various sources or literature.

This research is descriptive qualitative in nature which means describing a research subject.

The type of data used in this paper is secondary data, which means data taken by researchers as support study in a way scientific that is with do studies References (search through book, article, journal, magazine, Internet And source others). examine regulations Which relevance

▪ Discussion

1. Financial Meaning Technology

Financial Technology (Fintech) is technological hybridization in financial service processes traditional with based technology. According to PWC, the financial meaning of technology.⁴ is a dynamic segment at the intersection of the financial services and technology sectors where start-ups are focused on technology and represents a new market view of innovating products and services Which moment This is provided by traditional financial services industry. As for understanding Another is that Fintech refers to the use of technology to provide internal solutions sector finance.⁵

The definition of Sharia Fintech is a combination of existing innovations in the field finance and technology make it easier transaction and investment processes based on n sharia values. Even though Fintech is a new breakthrough, it is experiencing rapid development. Islam is a comprehensive religion so that in

⁴ Subarjo Joyosumarto, *BANKIR Leadership of 21st Century Banking Institutions* (PT. ElexMediaKomputindo, 2018).

⁵ Arner D. W. Opportunities and Challenges. Fintech and RegTech, 2016.

the financial sector there must be rules that are in accordance with it principle Sharia Islam.⁶

2. Legal protection Financial Technology in legislation Indonesia

According to the Explanation of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, legal problems often occur when information, communication and/or transactions are sent electronically, especially when evidence and matters Legal matters are carried out through an electronic system.⁷ especially in terms of evidence and matters related to legal actions carried out through electronic systems and in reality cyber activities are not as simple as one might think, but there are legal issues if someone's rights are violated, such as gambling, insulting or defaming, extorting or threatening, dissemination of false and misleading news resulting in consumer losses in electronic transactions, as well as acts of spreading hatred or enmity based on ethnicity, religion, race and class, as well as sending threats of violence or fear aimed at personally which can be accessed, distributed or copied from anywhere .⁸

Owners and users of Financial Technology are also clearly categorized as consumers. As a consumer, we really need to get

⁶ <https://amartha.com>, accessed date April 19 2023.

Henri Christian Pattinaja, "Titing Sugiarti, Research, Legal Protection for Owners and Users of Bitcoin Virtual Currency in Indonesia, (Jakarta: Faculty of Law, Pancasila University, 2018), Pg. 20," *Pancasila University Journal* 7 No 2 (nd).

⁸ Titing Sugiarti, *Legal Protection for Owners and Users of Bitcoin Virtual Currency in Indonesia* (Jakarta: Pancasila University, 2018).

protection from the state. In Article 1 of Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection, "Consumer Protection is all efforts that ensure legal certainty to provide protection to consumers.

Legal protection is defined as providing protection to individual interests which is protected by law.⁹ Protection aimed at consumers in the business world seen Good in a way material nor formal is increasingly important, considering the in the rapid movement of technology as a driving force for productivity producer of goods or services that will be produced in achieve the goals of a business.¹⁰

Business or services in The financial sector has become a business that is very vulnerable to various acts of action Which harm by person Which No bear it answer with utilise existence technology for do something action Good That misuse or abuse Which result loss for para usage the.¹¹

Moment this is a role from the Authority Service Finance (OJK) in give legal protection for consumers One of them is very important to pay attention to by issuing OJK regulation Number 77/POJK. 01/2016, namely regarding Information Technology Based Money Lending and Borrowing Services Which hereinafter referred to as POJK LPMUBTI and there are t in

the Financial Services Authority Circular Number 2/SEOJK.07/2014 concerning Service and Resolution of Consumer Complaints For Financial Services Business Actors .¹²Article 1 number 3 POJK LPMUBTI states that what is meant by Information Technology Based Lending and Borrowing Services is maintenance service service finance Which aim For bring together the lender and the loan recipient in order to carry out a loan agreement in the form of a Money rupiah in a way direct through electronic system by utilizing n network Internet.

3. Legal Protection Against Consumer Data Security in Fintech Business

One of the characteristics and objectives of the law is to provide protection (guidance) to the community. Law is the latest means of control various change in public so that change Which there is also the ability to realize development nation and country to that direction more positive.

Law able to provide solutions for possible uses and maximizing use of science and technology a expediency and continuity life human,¹³deep context Fintech, wrong one goal of the law is to protect consumers. Legal protection is provide protection for rights human rights that are harmed by others and this protection is given to

Urges Ayu Lila Astuti, AA Ngurah Wirasila, "Legal Protection for Consumers in E-Commerce Transactions in the Event of Losses," *Kertha Semaya Faculty of Law, Udayana University* , 2018, 6.

¹⁰ Celina Tri Siwi Kristiyanti, *Consumer Protection Law* (Jakarta : PT Sinar Graphics, 2018).

¹¹ Edy Santoso, *The Influence of the Era of Globalization on Business Law in Indonesia* (jakarta , 2018).

¹² I Wayan Bagus Pramana, "The Role of the Financial Services Authority in Supervising Non-Bank Financial Institutions Based on Financial Technology Types of Peer to Peer Lending," *Kertha Semaya* 6 no 7 (2018): 4.

¹³Sri Lucky Hartono, 'Perspective Law Business On Era Technology' (Speech Inauguration of ProfessorsUniversity Diponegoro, 1995)

the community so that they can enjoy all the rights granted by law.¹⁴

The existence of the OJK as a supervisory institution in the financial services sector is expected able to protect consumers from PUJK which is considered to be detrimental to the interests of consumers, in this case OJK Fintech consumers as institution Which has the authority to supervise business activities in the financial services sector, must be able to protect consumer users financial services that place the funds and/or utilise service Which available in institution service finance.

In this research, it is specifically Fintech consumers. This is as determined in Chapter 4 letter c Act No. 21 Year 2011 about Authority Financial Services which stated that one of the objectives of establishing the OJK is in order to protect the interests of consumers and society in in sector service finance. Protection This intended in order to give flavor safe towards consumers as service users finance. Fintech consumers as users of financial services have the right to obtain protection of personal data in Fintech companies give financial services to her.

4. Fintech Legal Protection and Regulation with Maqashid Sharia

Transactions that comply with sharia Islam is of course based on the Al-Qur'an and Hadith. All forms economy and transaction business according to teachings Islam which sourced from the Koran

and Sunnah is For pay attention to the rights of individuals who must protected as well as to enforce n high sense of solidarity towards public.

On basically contract Which there is in Fintech there is no conflict over time does not conflict with sharia principles. Apart from that, Fintech refers to wrong One principle muamalah that is antardhin which means mutual approval between both parties. On base here it is contract or transaction Which happen between the two sides party become legitimate.

Different with institution finance conventional, sharia financial institutions must base its operations on principles sharia ie the prohibition on usury gharar and maysir so that it is emphasized even more to system for results (profit and lose sharing) as his replacement.

There are many Muslim experts explains that the basis of interest is very forbidden Because can give rise to happen injustice (injustice) in the economic order of society.

On the other hand, sharia economic institutions conceptually based on the principle of partnership based on equality (equity), justice (fairness), honesty (transparent), and only looking for profit Which halal just (falah oriented),

The comfort provided above transactions via sharia-based Fintech cannot be separated from the characteristics of sharia business h Which relies on economic foundations i Sharia is divinity (divine), justice (*al adl*), prophethood (annubuwwah), government (*al-khilafah*), and results (*ma'ad*).¹⁵

Fadlan, "ISLAM-BASED ECONOMIC DEVELOPMENT CONCEPTS (An Effort to Develop a Just, Prosperous and Prosperous Indonesian Economy)," *Al-Ihkam: Journal of Law & Social Institutions* 5 No 2 (2012): 25-274.

¹⁵Fadlan Fadlan, "ISLAM BASED ECONOMIC DEVELOPMENT CONCEPT (A Development Effort A Fair, Prosperous and Prosperous Indonesian Economy)," *Al-Ihkam: Journal of*

Request user service Fintech-based services sharia an increase supported by market share service users from Indonesian society the Muslim majority encourages service Sharia-based fintech is required to comply with the rules of sharia business transactions And of course it must be in accordance with the maqashi d sharia also.¹⁶

It should be emphasized that Fintech services, both conventional and Sharia must prioritize the interests of Fintech transaction users. Therefore, start-ups, especially those with principles sharia Also must load provisions relating to protection consumer Which Already loaded in POJK No. 77/POJK.01/2016 and related laws, namely the Law Number 8 of 1999 concerning Protection Consumers (UUPK), Government Regulation Number 82 of 2012 Concerning System Organizer and Transaction Electronics (PP PSTE), which is n derivative from Law No 11 Year 2008 about Information and Transaction Electronic (Law ITE). Which what is the content of the regulations and laws? when reviewed more in have relevance and correlation with maqashid sharia, the aim of which is to guard the benefit of humanity, including: first, consumer protection on Fintech transactions before they occur contract, which includes; 1) Approach or u consumer education; 2) Completeness of information and transparency product service; 3) Handling complaints and resolving disputes consumer; 4) Prevention fraud and reliability of

service systems; and 5) Protection of personal data. Second, consumer protection Fintech after the contract takes place, Which includes;

- a. Protection against delays payment
- b. Consumer protection for injury promise
- c. Protection of settlement dispute proper
- d. Analysis code ethics billing.

In terms of services and functions, Sharia fintech is tailored to the goals and maqasyid foundation sharia so that in practice it does not deviate from religious teachings Islam.

First, maintaining religion (*al-din*) is related to levels a person's faith in the creator namely Allah SWT which is then manifested in the form of worship such as five daily prayers, fasting, zakat, pilgrimage and paying off debts. In this case sharia fintech created with the intention of making things easier every community in transacting to achieve enjoyment worship. Viewed from the types Wrong One the type of fintech that supports mashl ahah This is type fintech digital payments Where inside it there is feature Which allows people to pay infaq, shodaqah, zakat and even pay the cost of Hajj in installments. This is wrong an effort made by sharia fintech to protect religion its users.

Second, Maintaining the Soul (*Al-Nafs*) mashlahah This related with guard health a person's soul without causing physical or psychological illnesses that could disturb him well-being. From the beginning of its formation, sharia fintech prioritized the benefits of everything the intended so that public achieve prosperity and prosperity. Fintech Sharia is also protected by a legal umbrella to provide

Law & Social Institutions5, no. 2 (2012):25-274 Ahmad

Basori Alwi., "Information Technology (Fintech) Based Financing Based on Sharia," *Al-Qonun Journal* 21 No 2 (December 2018).

comfort for its users. This law is contained in Law Number 8 of 1999 concerning Protection Consumers (UUPK), Government Regulations Number 82 of 2012 concerning Organizers System and Transaction Electronic (PP PSTE).

Third, protecting offspring (*Nasb*). This mashlahah is related to marriage which is the sharia way of obtaining descendants. Sharia fintech itself is trying looking after offspring with fintech Which based investment (financing and investments). With the existence of sharia fintech h type this is what users expect dapt take advantage of it well to use plan for your family's future achieving prosperity and harmony in family.

Fourth, Maintain Reason (*Al-Aql*) mashlahah This is related to science as religious foundation and in doing work. Someone who does not have knowledge will not be able to think about priorities in charity. Therefore everything should be based on science. Fintech Launch Sharia has been studied in various disciplines science and then based on law. Which where content of the regulations and the law when examined more deeply has relevance and correlation with There are five maqashid sharia guidelines , the outline of which is safeguarding man.

Fifth, guarding assets (*Al-Mal*). is an important component in life but it is not the main component. Assets are a tool used to fulfill needs. Treasures can be obtained from trading, cooperation between individual and etc. In Islam, the acquisition of property must be free from the elements of usury, maysir and gharar. Apart from that, the purpose of there is yes Fintech must aligned with objective from the

transaction For bring and maintain the benefit (goodness) while avoiding evil (damage) both in this world and in the afterlife.¹⁷

Sharia fintech itself has special criteria of which do not contain elements of usury, ghoror (fraud), madlorot (negative effects). intended so that treasure from fintech users maintained security and halal. Thus, you can It can be seen that sharia fintech has a maqashid sharia foundation and also has a clear legal umbrella and Already stated in Constitution. Stay how stakeholders carry out and evaluate the future performance of sharia Fintech has significant space for society Indonesian Muslims.

Because It can be understood that the regulations that have been made have a meeting point with maqashi d sharia, even though these regulations are not yet perfect and have reached the final point, but at least they are good and will be confirmed and additional regulations will be added better for the development of Fintech sharia in Indonesia.

• Conclusion

Legal Protection by the Authority Service Finance (OJK), ie give legal protection for consumers One of them is very important to pay attention to by issuing OJK regulation Number 77/POJK. 01/2016, namely regarding Information Technology Based Money Lending and Borrowing Services Which hereinafter referred to as POJK LPMUBTI and there are in the Financial Services Authority Circular Number 2/SEOJK.07/2014

¹⁷ Shidik, *Ushul Fiqh* (Jakarta : PT Intimedia Cipta Nusantara, 2016).

concerning Service and Resolution of Consumer Complaints For Financial Services Business Actors .

Consumer protection for Fintech after the contract has occurred includes protection against payment delays, protection against breach of contract, protection for fair dispute resolution, and analysis of the code of ethics. In Fintech there is Sharia Fintech adapted to the goals and foundations of maqasyid sharia in its services and functions so that in practice it does not deviate from the teachings of the Islamic religion, to protect the religion, namely Ad-Din, protect the Soul of An-Nafs, protect the Order of An-Nash, Maintain Intellect Al-Aql, Al-Mal Treasure.

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