

ANALYSIS OF FINTECH SUPERVISION REGULATIONS FROM THE PERSPECTIVE OF SHARIA ECONOMIC LAW

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Abstract - The rapid development of technology and the digital era has both positive and negative impacts on human life in various aspects. However, technological development is actually a phenomenon that will certainly continue to occur and should be used as an opportunity and challenge to obtain the benefits and conveniences offered by technology development. This includes in the financial services industry, where information technology has spread to the entire financial sector, including Islamic banks that uphold Sharia values. This research is normative-empirical legal research with descriptive analysis technique. The purpose of this research is to analyze how the government oversees and provides legal protection against conventional and Sharia fintech violations. Based on the study results, it was found that the government has made fintech regulation and supervision policies for legal protection against the rapid development of fintech, with the implementation of a fair rule of law and advanced financial service inclusion. However, to overcome fintech violations, specific laws and clear legal aspects in fintech legalization are needed as a research concept in the future.

Keywords: Fintech, Islamic Economic Law, Legal Protection.

INTRODUCTION

In this millennial era, technological development has become an important need to meet community services that are increasingly sophisticated, fast, and effective. One of the fields that has experienced technological developments is financial services, with innovations that use technological sophistication as a means to channel financial transactions in the community. This innovation is known as financial technology or "financial technology" (fintech). According to Nizar (2017), Fintech is the application of digital technology for financial services used by business actors in the financial sector. Meanwhile, according to Bank Indonesia, specifically fintech is the use of technology in the financial system to produce new products, services, technology, and/or business models in several categories such as payment systems, market support, investment management and risk management, lending, financing and capital provision and other financial services. Fintech products and services must meet the criteria of being innovative, beneficial to the community, widely usable, and meeting other criteria set by Bank Indonesia. However, the development of fintech regulations still experiences obstacles in terms of supervisory infrastructure and regulatory obstacles that make supervision only able to be carried out at the pre-operational stage.

Along with the growth of the financial services industry based on "fintech" technology triggered by public mobility in this millennial era, the development of technology has become a fundamental need and has become the most effective media for access to information from various sectors, including economic, legal, political, social, and others. One of the government's efforts to increase national economic growth in the era of technology-based financial services is by implementing Presidential Regulation Number 82 of 2016 concerning the National Financial Inclusion Strategy, which provides open access to information for the public to get quality, timely, smooth, and safe formal financial services at affordable costs according to their needs and abilities respectively.

Regulations regarding the existence of fintech have now been formed, several regulations have been in accordance with the function of fintech financial services, both conventionally and based on sharia principles. These regulations are made by the authority of government agencies that



oversee the fintech services themselves. Based on the function of the service, there are four types of fintech operating in Indonesia, namely:

1. E-aggregator

E-aggregator is a type of Fintech engaged in collecting and processing data that is useful for consumers in decision making. These start-ups offer product comparisons, such as price, features, and benefits. Some examples include Cekaja, Cermati, KreditGogo, and Tunaiku.

2. Payment

Payment is a type of fintech that focuses on payment services, clearing, and transaction settlement. They provide payment systems both by the banking industry and regulated by Bank Indonesia such as BI-RTGS, SKNBI, and BI-SSSS. Some examples of this type of fintech are Kartuku, Doku, iPaymu, Dana, and Ovo.

3. Management Risk Investment

The fintech provides risk and investment management services, which include robot advisors that provide financial planning and e-commerce and e-insurance platforms. Some examples of such fintechs are Ajaib, Dana Syariah, and Bareksadana.

4. Peer to peer Lending

Fintech peer to peer lending (P2P) is a platform that connects lenders and borrowers in one platform. This fintech provides an opportunity for lenders or investors to earn interest or profit sharing from funds lent to borrowers. Some examples of P2P fintech in Indonesia include Modalku, Investree, Amarta, and Syarfi.

Based on the explanation above, the author tries to analyze cases of violence that occur against children based on a criminological perspective. The results of writing this study are expected to find factors that are the reasons for violence against children that often occur and possible ways to overcome the adverse effects experienced by children who are victims of violence cases.

Although there are regulations related to fintech services, there are still complaints of legal problems from the public related to fintech services, especially the fourth type of fintech, namely peer to peer lending. This shows that tighter supervision and law enforcement of fintech lending is still needed to protect consumer rights and ensure the continuity of an ethical and responsible fintech business. Respati (2019) In mid-2019, there were around 4,500 reports of complaints related to fintech lending services to the Legal Aid Institute (LBH) in Jakarta. In addition, the investment alert task force also reported the existence of 683 illegal peer to peer (P2P) lending fintech entities from 2018 to 2019, and has successfully stopped the activities of 1,087 illegal fintech entities. Although it has not fully provided adequate protection for the public regarding complaints that occur, the government has made efforts to protect the community by taking steps to regulate fintech. However, there needs to be an improvement in the legal aspects that deal with violations committed by fintech business actors. Since sharia-based financial services are permitted nationwide, the push to implement sharia economic law regulations related to the development of fintech financial services is considered necessary as part of the current growing fintech regulatory efforts.

Fatwa No: 117 / DSN-MUI / II / 2018 concerning Information Technology-Based Financing Services with Sharia Principles is a relevant regulation in handling fintech developments by applying Islamic law. Thus, this regulation will support the application of the rule of law applicable in the fintech industry. This shows that Islamic law has an important role in responding to fintech problems, especially in fintech based on sharia principles in its operations. Although the seventh provision regarding dispute resolution Fatwa No: 117/DSN-MUI/II/2018 states that dispute resolution between parties can be carried out through consensus deliberation, if consensus deliberation is not reached, dispute resolution is carried out through a dispute resolution institution based on sharia in accordance with applicable laws and regulations. Therefore, judging from the current regulations, the author wants to examine more deeply the regulation and supervision of fintech in Indonesia, especially from the perspective of sharia economic law.



METHOD

This type of research is descriptive of analysts is. According to Sugiyono (2014), the descriptive analysis method is statistics used to analyze data by describing or describing the data that has been collected as it is without intending to make generalized conclusions or generalizations. Descriptive analysis in this study is intended so that the results of the study can provide a complete picture as a whole and can describe the results of the analysis of a problem under study. To be able to achieve comprehensive and descriptive research, this research was conducted with normative-empirical legal research that refers to written regulations in force in Indonesia, and is supported by the results of interviews with related parties.

The types of data in this study are secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials, and are supported by primary data obtained directly from sources through interview techniques. Then this research uses a legal systematics approach, namely an approach to the legal material collected. Data analysis is qualitative. The processing of legal materials in this study uses a deductive method, where this study draws conclusions from general problems to specific problems

RESULTS AND ANALYSIS

Fintech Regulation in Indonesia

The applicable regulations carried out by OJK in efforts to supervise fintech, especially the supervision of Information Technology-based lending and borrowing services (P2P Lending), a legal umbrella that rivals' regulations and regulations are regulated in POJK Number 77 / POJK.01 / 2016. OJK supervision covers two stages of the online-based lending and borrowing process, namely at the pre-operational stage of the business and during business operations. At the pre-operational stage of the business, the organizer must register and permit the operator to OJK before the business is carried out, both legal entities in the form of limited liability companies and cooperatives, as stated in Article 7 POJK Number 77 / POJK / 01/2016.

The effort of a fintech company to obtain a registered proof letter from the OJK, namely by means of directors from related companies must submit registration no later than six months before business operations begin to the Chief Executive of Insurance Supervision, Financing Institutions, Pension Funds, and Other Financial Service Institutions. Application for registration must use the form and attachment documents listed in article 8 paragraph (3) POJK Number 77 / POJK / 01/2016. OJK will review registration applications from information technology-based financial service providers and provide approval within 10 working days. Operators in the form of PT can be owned and established by Indonesian or foreign citizens, Indonesian or foreign legal entities. However, for organizers of foreign nationals or foreign legal entities, the maximum permissible shareholding is 85%, either directly or indirectly.

Organizers who have been registered with OJK must apply for a license as an organizer within a maximum of 1 (one) year after the date of registration with OJK. If within that period, the organizer who has obtained a registered proof letter does not apply for a license, then the proof letter registered as an organizer will become void and the organizer will no longer be registered with OJK. They can no longer apply for re-registration with OJK. POJK Number 77/POJK.01/2016 regulates the requirements for submitting a license application. OJK must approve or reject the license application within no later than 20 (twenty) working days after receipt of the permit application documents. During these 20 (twenty) days, OJK will evaluate the completeness of the documents and conduct a feasibility analysis of the work plan. In the process of granting a permit, OJK can conduct interviews with owners and/or prospective directors and verify directly at the permit applicant's office. The interview aims to conduct a fit and proper test for prospective directors/commissioners of the organizer. In addition, the interview also aims to check whether the source of capital deposits comes from loans or money laundering activities and other financial crimes, as well as check whether candidates for directors / commissioners have been listed in the list of bad debts, have been convicted of committing crimes in the field of financial services business and / or economy based on court decisions that have had permanent legal force in the last



5 (five) years, and has been declared bankrupt based on a court decision that has permanent legal force.

In the pre-operational stage, OJK has regulations regarding the supervision of changes in ownership of organizers, which must obtain approval from OJK before being carried out. If an operator who has obtained a license is unable to continue its operational activities, they must submit a license revocation application to OJK for reasons and plans for completion of rights and obligations of use. The license revocation application must be submitted no later than 20 working days from the date of the license revocation application, and OJK will supervise the license revocation process.

To start providing information technology-based lending and borrowing services, the operator must first obtain an operational license from the OJK. In this case when permission has been granted by OJK. Therefore, the OJK will carry out two types of supervision during business operational activities, namely by submitting reports by the company or organizer (self-assessment system) and direct examination by the OJK (officer supervisory system). OJK conducts two types of supervision when operating the business of information technology-based lending and borrowing service providers, namely:

Self-Assessment System

The first type of supervision is the submission of reports by companies or organizers (self-assessment system) regulated in POJK Number 77 / POJK.01 / 2016. The report is submitted quarterly and ends on March 31, June 30, and September 30. OJK continues to supervise with the type of self-assessment system supervision even if there are organizers who have not applied for an operating permit to the OJK, but have started their business activities. In this type of supervision, OJK monitors the implementation of business activities, finances, and the implementation of the articles of association of the implementation. The application for an operating permit end at the specified limit. Article 45 to Article 56 of POJK Number 77/POJK.01/2016 stipulates that operators who have obtained permits are required to provide periodic reports electronically, namely monthly reports and annual reports, to OJK. Fitriadi (2017) explained that the monthly report must be submitted no later than 10 working days in the following month, while the annual report which includes reports on the implementation of technology-based lending and borrowing services and financial statements, must be submitted in physical form or electronic documents, with a submission period of no later than 20 working days after the reporting period ends (reporting period is January 1 until December 31).

Officer Supervisory System

The second type of supervision carried out by OJK is the officer supervisory system, which is a periodic check conducted by OJK. This examination is a series of activities carried out by OJK to collect, search, process, and evaluate data and information regarding information technology-based lending and borrowing service business activities. This examination is carried out no later than 10 working days from the due date of reporting and a period of 1 year. The purpose of this periodic inspection is to ensure that the periodic reports submitted by the organizer are in accordance with the actual state of the company. In addition to supervising periodic reports, OJK also conducts checks to gain confidence in the correctness of periodic reports and assess compliance with applicable regulations. OJK inspection is carried out once a month to check the monthly report submitted by the organizer. The aim is to ensure the correctness of the substance aspects of periodic reports and compliance with statutory provisions. If needed, OJK may request additional information and/or additional data from the organizer. The same is the case with the examination of the annual report, where OJK can request additional information and/or additional data from the organizer.

In addition to conducting periodic checks, OJK can also conduct incidental checks if violations of applicable provisions are suspected based on the results of analysis from monthly reports or from complaints. This incidental examination may take the form of an examination of the audit track record for the purposes of supervision, dispute resolution, verification, and other examinations. In



addition, OJK also supervises the implementation of business activities by regulating several prohibition provisions in Article 43 POJK Number 77/POJK.01/2016.

At the end of 2016, OJK issued POJK Number 77 / POJK.01 / 2016 relating to information technology-based money lending and borrowing services, which became the basis for the implementation of P2P Lending business activities. This POJK also regulates the supervision carried out by OJK on the implementation of these business activities, because P2P Lending is considered as one type of fintech that is included in the realm of supervision of the non-bank financial industry sector. As the authority that has the authority in macroprudential supervision in Indonesia, OJK must oversee the implementation of fintech P2P Lending as other financial service institutions. Although Bank Indonesia also supervises fintech, BI supervision focuses more on fintech that is included in the payment system category, such as companies that provide payment gateway services, remittance, e-wallet, switching, and others. Meanwhile, OJK handles fintech in the fields of P2P Lending/financing, insurance, and so on. OJK's supervision of fintech P2P Lending activities is currently still at the pre-operational stage of the business, and Muhammad Mufid, Head of OJK's Financing Institution Supervision Section 3, stated that types of fintech enabler business activities such as e-KYC, robo advisors, big data, and others will be handled across authorities.

After POJK Number 77/POJK.01/2016 was issued, OJK's main focus was on submitting registration and licensing for P2P Lending companies as part of supervising the pre-operational stage of the business. However, OJK still does not have a special department that handles fintech like the BI Fintech Office at Bank Indonesia, so full supervision has not been carried out. Currently, OJK is designing an organizational structure to develop and supervise fintech appropriately to align with economic development goals. AFTECH continues to encourage the establishment of a fintech department at OJK in order to solve fintech problems, especially P2P Lending, as a follow-up and commitment of regulators after the issuance of POJK 77/POJK.01/2016.

The supervision carried out by OJK currently focuses more on the development of fintech companies, which is an inherent part of the supervisory task. One example is providing advice and input on financial products and services offered by fintech companies. OJK conducts supervision by communicating with fintech industry players and collecting data related to their activities, which can be considered as a broader form of supervision (Mufid, 2016).

Sharia Economic Law Views on Fintech

According to Syamsudin (2020) Fintech is basically a form of implementation of advanced technology to summarize pre-existing financial transaction activities, but by moving to the digital realm, the problem is getting more complex because security becomes more important. Fintech serves to simplify the process that was previously done face-to-face with physical guarantees, but has now changed to link-based or network-based. Elkafilah (2020) explained that Fintech with sharia principles, which is based on Islamic law and more specifically sharia economic law, has its own views on fintech issues. Contextually in jurisprudence, financial technology-based fintech services fall into the category of fathu al-dzari'ah, which includes opportunities for new innovations.

The Islamic economic view, especially in the context of muamalah fiqh which examines the nature of transactions, states that a contract is an agreement that occurs between two parties involving *ijab* and *qabul*. However, with the existence of fintech that causes transactions to be carried out without direct meetings between the two parties, problems arise in the realm of fiqh related to the concept of unity of transaction assemblies or *ittihadu al-majlis al-aqdi*. Imam Nawawi in the book *Raudlatu al-Talib* at a glance says: "What is meant by the assembly required to make submissions in it is the *tawajub* assembly (mutual acceptance assembly between two or more transaction actors), which is a picture that can give the impression of the establishment of relations between *ijab* and *qabul*, either by looking at the place where the contract takes place or not".

In the realm of jurisprudence, if a *shighahakad* must be submitted in writing, then it means that the contract takes place *secarahukmiy*. If *hukmiy* acceptance is not enough then furthermore, Sheikh Wahbah al-Zuhaili explains:

ليس المراد مه اتحاد المجلس كن المتعاقديه في مكان واحد ؛ لأوه قد يكن مكان أحدهما غير مكان الآخر، إذا وجد بينهما واسطة اتصال ؛ كالتعاقد بالهاتف

Meaning: "It is not what is meant as a single assembly of contracts is the condition of two people who contract as must exist in one place. Sometimes the position of one of these two parties is not in the same location as the other party, but there is a testament that can connect between the two so that communication is established, for example transacting via telephone plane. "

According to sharia principles in the realm of jurisprudence, if a contract must be submitted in writing, then it is considered a hukmiy contract. If hukmiy acceptance is not enough, then Sheikh Wahbah al-Zuhaili explained that if the concept of ittihad al-majelis does not require the presence of both parties in the same contract assembly, but can still be done through information technology testament, then hukmiy acceptance through writing or digital messages is justified by the Shari'a. Therefore, opening a digital account as a testament to transactions through the media is also allowed by Sharia, but opportunities for misuse of fintech issuers in managing consumer funds need to be anticipated. Sharia asserts that if there is a hukmiy-based contract, it is necessary to have a guarantor, who can be represented by a third party, namely the government. Bank Indonesia has anticipated the possibility of fintech abuse by issuing PBI Number 19/12/PBI/2017 concerning the Implementation of Financial Technology and PADG Number 19/14/PADG/2017 concerning Limited Trial Room for Financial Technology before it was held. With this regulation, there is already a guarantee of the existence of guarantors. Therefore, fintech can be applied and justified by sharia as long as there are no illats of haram such as usury, speculative (maisir), fraud (gharar), fraud (ghabn), and harm (dlarar).

CONCLUSION

For protection under the legal umbrella of the rapid development of fintech, the government has made regulatory policies that regulate and supervise fintech. The implementation of a just rule of law requires strict action against fintech violators and provides a deterrent effect, and requires synergy and more advanced financial service inclusion efforts. In the context of sharia, there are clear references and legal aspects that are in accordance with the Islamic and positive legal views. However, to overcome the problem of fintech violations, special laws on fintech are needed that regulate good and correct fintech management, as well as rules for legal action when violations occur. Therefore, the legal aspect of fintech legalization will be a research study concept in the future.

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