

Regulating Fintech Lending in Indonesia: A Study of Regulation of Financial Services Authority No. 10/POJK.05/2022

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Abstract—POJK 10/2022 was issued by the Financial Services Authority to replace POJK 77/2016 with a new nomenclature. The difference in name certainly has implications for the substance or content of the regulation. The purpose of this study is to explain the regulation of fintech lending in POJK 10/2022, which replaces POJK 77/2016. This is normative juridical research, which uses a statutory approach to conceptualize law as a norm or rule that applies and becomes a reference for people's behavior. The data sources come from secondary data. According to the findings of the research, the regulation of fintech lending in POJK 10/2022 is more comprehensive than that in POJK 77/2016. Several articles contain new provisions, such as those concerning sharia funding for fintech, provisions for recipients of invoice defaults, and supervision of fintech lending, though several provisions in these articles remain unchanged from the previous regulations. POJK 10/2022 vastly improves on POJK 77/2016, which has been revoked and is no longer in effect.

Keywords— *Regulation, Fintech, Fintech Lending, Financial Services Authority Regulation.*

1. INTRODUCTION

Fintech (financial technology) lending or fintech lending is a rapidly growing type of financial technology. The global fintech lending market has experienced significant growth, increasing from \$107.84 billion in 2022 to \$143.64 billion in 2023, with an average annual growth rate of 33.2%. It is estimated that the fintech lending market will continue to expand and reach a value of approximately \$419.7 billion by 2027, with an average annual growth rate of 30.7% [1]. In Indonesia, this loan or funding model is also growing rapidly and is more commonly known as online loans. The growth of fintech lending in Indonesia are shown by the high accumulation of disbursements of funds made by service providers, totaling 102 providers. According to the Otoritas Jasa Keuangan/Financial Services Authority (FSA) data, in December 2020 the accumulated distribution of funds reached IDR 155.90 trillion growing by 91.30% year on year compared to the same period in 2019 [2]. In September 2021 the total loan disbursement reached IDR 262.93 trillion [3]. In May 2022, the accumulated loan disbursement reached IDR 380 trillion with outstanding loans reaching IDR 40, 2 trillion [4]. As of April 2023, the Indonesian Fintech Association (Aftech) reported that the cumulative amount of loans facilitated had reached IDR 17.3 trillion [5].

The increase in the number of accounts of lenders and recipients of funds in fintech lending services also demonstrates the development of fintech lending. In 2019, the accumulated number of donor accounts was recorded at 605,935 entities, an increase of 192.01% compared to 2018, which was only recorded at 207,507 entities [6]. In December 2020, the accumulated number of funder accounts was recorded at 716,963 entities, an increase of 18.32% compared to the same period in 2019. The increasing

number of funder accounts was seen in March 2022, when the number of funder accounts was recorded at 10,991.872 entities [7].

The accumulated number of accounts of recipients of funds also experienced high growth. Based on the records of the OJK, the accumulation of beneficiary accounts in December 2018 was recorded at 4,359,448 entities, and in the last five years, it peaked in December 2020, when the accumulated number of beneficiary accounts reached 43,561,362 entities [8]. In December 2021, the accumulated accounts of recipients of funds experienced a sharp decline and only stood at 13,473,084 entities [9]. However, it rose again in March 2022 to 17,026,907 entities. Meanwhile, referring to data from the Indonesian Joint Funding Fintech Association (AFPI) from 2007 to May 2022, it was recorded that 83.15 million people had utilized fintech lending services [10].

The rapid development of fintech lending requires strong regulations as the legal basis for the implementation of these fintech services. In the Black Law Dictionary, it is stated that regulation is a rule or order that is determined by superiors or competent authorities related to the actions of people who are under them [11]. Regulation is also often considered as an activity that limits behavior and prevents certain unwanted activities from occurring [12]. Regulations or policies from the competent authority are crucial so that high-risk businesses can be mitigated and the risks that arise are reduced [13]. In 2016, the FSA issued a regulation that serves as the legal basis for the existence of fintech lending, namely, the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. However, POJK 77/POJK. 01/2016 (hereinafter referred to as POJK 77/2016) has several weaknesses because it does not regulate the guarantee of the security of lender funds and does not regulate the existence of fintech lending, which in its operations is subject to legal principles [14]. In POJK 77/2016, it has also not provided maximum legal protection for service users as consumers whose rights in business or economic activities must be considered by policymakers and fintech lending service providers as actors in financial economic activities [15].

The OJK replaced POJK 77/2016 with POJK No. 10/POJK.05/2022 (hereinafter referred to as POJK 10/2022) concerning Information Technology-Based Co-Financing Services to improve the implementation of fintech lending services. Formally, the two regulations have different nomenclature. POJK 77/2016 uses the term "Information Technology-Based Lending and Borrowing Services," while POJK 10/2022 uses the nomenclature "Information Technology-Based Co-Financing Services". The difference in the nomenclature, of course, hypothetically has implications for differences in the content of the regulation or substance of POJK 10/2022. For this reason, more comprehensive research and studies are needed on the regulation of fintech lending as stated in POJK 10/2022 to obtain the latest explanation and understanding of the fintech lending regulation.

2. BACKGROUND THEORY

In the face of the highly dynamic development of fintech lending, regulations are needed that can protect the interests of all parties involved in this economic activity. The need for regulations that protect all parties is based on the principle that the rule of law is the main foundation in the formation of the Indonesian state, as explained in Article 1(3) of the 1945 Constitution of the Republic of Indonesia. Consequently, all components of the state and society are required to make the law foundation for carrying out their duties and responsibilities in this country.

To fulfill this responsibility, one of the essential steps involves the establishment of effective regulations capable of ensuring legal certainty, as the law embodies the fundamental principles of justice. As outlined in Gustav Radbruch's perspective, law is driven by three core values; justice, utility, and legal certainty [16]. Achieving legal certainty necessitates the precise and robust formulation of regulations. This matter is vital to prevent ambiguity arising from varying, contradictory, or ambiguous interpretations of the law. Regulations that possess clarity and enforceability are easily comprehended and adhered to by all individuals [17]. Consequently, everyone can anticipate the repercussions of their actions based on the legal certainty enshrined in the governing regulations or statutes. Legal certainty stands as an indispensable hallmark of the law, particularly in written law, as the absence of legal certainty would undermine its role as a guiding principle for societal conduct.

According to Theo Huijbers, there are four aspects related to the concept of legal certainty. First, legal certainty is realized in the law that is regulated in regulations, which refer to legal regulations or applicable laws. Second, this law is based on reality, which means that the law is formed based on facts that exist in society. Third, the facts stated in the law must be formulated clearly and firmly, to avoid any misunderstanding in the interpretation and implementation of the law. Finally, the positive law or regulation enacted must have resistance to easy change, so that it can remain consistently applicable [18].

3. LITERATURE REVIEW

Fintech lending is an area of study that can be viewed from various perspectives, including economic, financial and legal, and many empirical studies have investigated these issues. Suryono et al. [19]; They focused on issues related to fintech lending service activities in Indonesia. Several important issues were revealed that require serious attention in the development of fintech lending in Indonesia. First, there is a low level of public awareness of using fintech lending services wisely. Second, there is a risk of personal data fraud in the interaction between fintech lending platforms, investors, and borrowers over the Internet. Some individuals may utilize other people's data to apply for loans on fintech lending platforms. Third, there are illegal fintech platforms that operate without official licenses, often charge high-interest rates with short loan terms, and access borrowers' contact data for intimidation during collection. Fourth, the low level of literacy of digital financial products, especially among users of illegal fintech lending services, tend to be less familiar with digital financial literacy and are vulnerable to using services through less trusted channels such as direct messages or unauthorized websites. These facts highlight the need for regulations that can address these issues and protect users of fintech lending services in Indonesia.

Kharisma [20] argues that regulation plays a crucial role in protecting consumers, maintaining financial stability, and creating a safe environment for fintech innovation. So far, the financial sector has lagged in anticipating the development of financial technology companies and the fundamental changes they bring in various aspects, from the way banking operates to the way funding is done to the form of money itself. These transformations require a complete rethinking of financial regulation in an era where technology plays a major role in creating and maintaining financial system stability, protecting consumers, and supporting the accelerated growth of the digital economy.

Noor and Maskur [21] emphasized that the rapid development of fintech lending in Indonesia demands a solid legal foundation as a guideline for the players in this technology-based financial service. In Indonesia's legal system, which upholds the principle of the rule of law, the law has a role as a leader and behavioral guide. The law becomes the benchmark for community action while protecting the interests of all levels of society. The presence of fintech lending, which is a non-bank financial institution, must be regulated. No law specifically regulates fintech lending; however, its existence can be linked to the provisions contained in Law No. 21 of 2011 on the Financial Services Authority. Article 6 explicitly states that the FSA has the responsibility to regulate and supervise financial services activities, including those of bank financial institutions and non-bank financial institutions, as well as other entities involved in financial services. Therefore, the Financial Services Authority has the authority to issue regulations governing fintech lending.

4. DISCUSSION

4.1. Financial Technology Lending as Part of Financial Technology

The increase of information technology, which has become a part of human life, provides changes in every human activity that are disruptive. Before the development of information technology, economic activities, including those of a financial nature, were carried out face-to-face directly, but this was not the case with the development of information technology which has replaced face-to-face personal relationships with relationships facilitated by real-time technology. This change has increased e-commerce and financial technology (fintech) [22].

Jelena Madir defines that fintech is the use of technology to provide financial services and products to consumers. This can include insurance, banking, investing, or anything else related to finance [23] According to Kelvin Leong and Anna Sung, fintech is a multidisciplinary field that combines finance,

technology and innovation management. Based on these definitions, it is possible to conclude that fintech is a financial service that makes use of information technology [24].

Based on the definition of Fintech, all forms of financial services that use information technology as a basis in providing services to their customers can be referred to as Fintech. Several things that encourage the growth of fintech include the global financial crisis in 2008, which resulted in the loss of consumer confidence in traditional financial services such as banking; the emergence of smartphone technology, paving the way for payment systems made with cellular phones; and the accumulation of progress and rapid technological developments, providing opportunities for fintech to build the necessary infrastructure in line with the ever-evolving demand for financial products [25]. The global financial crisis and advances in information technology development have fueled the growth of fintech, which provides a variety of financial services to the general public.

Historically, the existence of fintech dates back to the nineteenth century, specifically to 1866, when transatlantic telegraph cables were installed. The transatlantic cable installation is a financial infrastructure that allows business people to conduct cross-border financial transactions. As a result, this early fintech growth was dubbed fintech 1.0, followed by fintech 2.0, which saw a shift in the use of technology from analog to digital, and fintech 3.0, which saw the use of artificial intelligence (AI), databases (Big Data), distributed computing, and cryptography on fintech services. The next development in the fintech industry led to the emergence of fintech 3.5, which is characterized by the formation and implementation of a blockchain network; the implementation of a mobile payment system based on Near Field Communication technology; and the development of biometric solutions based on facial recognition [26].

The rapid advancement of digital technology has promoted the growth and development of various types of fintech. Michael B. Imerman and Frank J. Fabozzi mention two types of fintech, namely horizontal fintech and vertical fintech. Blockchain, the internet of things, artificial intelligence, big data analytics, cybersecurity, biometrics, and cloud computing are examples of horizontal fintech. The criterion horizontal fintech is a technology that drives innovation in financial services. Fintech verticals include digital payments, digital banking, digital wealth management, equity crowdfunding, insurance technology, property technology, and fintech lending [27].

According to the United States Fintech Market Report, as quoted by René M. Stulz, fintech activities are classified into six types: payments, digital banking, digital investment management, and personal finance, blockchain, insur-tech, and digital lending [28]. In the meantime, In Lee and Yong Jae Shin identified six types of fintech businesses: payment, wealth management, crowdfunding, capital markets, insurance, and lending services [29]. Crowdfunding, market comparison, digital payment systems, fintech lending, and peer-to-peer lending are all growing and developing in Indonesia [30, 31]. Based on the categorization and type of fintech, it is clear that fintech lending, or peer-to-peer lending, is part of fintech.

The literature contains numerous definitions of fintech lending. Oh and Rosenkranz states that fintech lending is a financial service in which the donor and recipient of funds conduct transactions directly without the use of traditional financial institutions as intermediaries [32]. Rainer Lenz proposes a different definition, claiming that fintech lending is a type of fundraising in which internet platforms collect small amounts of money from individuals in a "crowd" in order to collectively finance larger loans to individuals or businesses [33].

The first legal definition of fintech lending is found in Article 1 Point 3 of POJK 77/2016, the article explicitly states that fintech lending is borrowing money in the rupiah currency. Meanwhile, with the issuance of POJK 10/2022, which revoked POJK 77/2016, the definition of fintech lending has also changed, as safely stated in Article 1 Point 1. The term used to represent the existence of fintech lending no longer uses the terms lending and borrowing money in the rupiah currency but uses the term "funding," both in terms of conventional or according to sharia principles. What is meant by "funding" is a method of obtaining funds for main or additional capital within the framework of the company's economy [34].

4.2. Substance of Financial Technology Lending Regulation in POJK No. 10/POJK.05/2022

The substance is a critical component in the effort to create public order, which serves as a guide for law enforcement. Lawrence M. Friedman argues that there are three closely related elements in the legal system: legal structure, substance, and culture [35]. The substance is the rules, norms, and patterns of community behavior or products produced by people who are in the system. A substance is a legal product of a structural component which, when written, is referred to as a law [36]. Substances that have not been able to accommodate the community's sense of justice need to be reformed, among others, by adopting legal institutions born of the influence of economic globalization. Improvements to legal materials or substances can be implemented through the creation of new legal provisions for things that have not been regulated at all and their modification. Existing legal provisions are to follow the development of legal awareness and needs that develop in society [37]. Referring to this theory, the replacement of the POJK 77/2016 with POJK No. 10/POJK.05/2022 is one of the efforts made by the Financial Services Authority to make improvements to regulations that are no longer following the legal needs of the community and adjust to the increase in fintech lending funding activities. There are several things that are regulated in POJK 10/2022, among others;

1. Legal form, ownership, and capital of the fintech lending service provider company: Fintech lending service providers are other financial services institutions that operate as limited liability companies owned by Indonesian citizens/corporations or foreigners/corporations and have an authorized capital of IDR 25 billion at the time of permit application;
2. Business activities of fintech lending service providers: The business activities carried out are limited to providing, managing, and administering Fintech lending services as a means of connecting funders and recipients of funds. Fintech lending service providers can cooperate with other information technology financial service providers;
3. Lender loan limit: Fintech lending service providers must follow regulations regarding the maximum credit limit granted to potential fund recipients or borrowers. The maximum limit of loan funds offered is IDR 2 billion;
4. Fintech lending service providers must apply for a business activity license by meeting the OJK's requirements and are required to submit periodic reports containing the number of lenders, loan recipients, and loan quality provided to loan recipients, as well as an assessment of loan quality and activities carried out after obtaining permission from the FSA. If you do not apply for a license, the fintech lending service provider is considered an illegal fintech lending provider;
5. Qualification of personnel in charge of the lending platform. People with expertise in the field of information technology must manage the fintech lending platform, and one of the directors or officials must have management experience in the financial service institution industry;
6. Fintech lending service users; service users are referred to as fund donors and recipients. Individual citizens or Indonesian legal entities, individuals/foreign legal entities, Indonesian/foreign business entities, or international institutions are the funders. Meanwhile, the recipient of the funds must be a citizen and domiciled in Indonesia or an Indonesian legal entity. In the funding transaction, the funder and the fund recipient agree on the amount of interest after consulting with the fintech lending service provider;
7. Agreement with a fintech credit service provider funding is based on agreements between recipients of funds and lenders, and lenders and credit fintech service providers. The fund recipient does not enter into a loan agreement with the fintech credit service provider, and the contract between the fund recipient and the fintech credit service provider is only an agreement regarding the use of services or the use of the platform provided by fintech credit. service provider. The agreement of the parties is recorded in the form of an electronic document or contract and verified using a digital signature. Fund recipients and funders are given access to view transactions;
8. Risk management in fintech lending: Risk mitigation is the obligation of the parties or service users. Fintech lending service providers are not responsible for any risks associated with loans. Fintech lending service providers are only responsible for matters related to the provision of services.

9. Management of information technology systems in providing loan services: Fintech lending service providers are responsible for the confidentiality of user data, both data related to personal data and data related to service user (consumer) transactions.
10. Educate and protect users of fintech financing service providers' services. Fintech lending service providers are committed to educating and protecting users (consumers) based on the principles of fair and trustworthy transparency, data confidentiality and security, and user (consumer) dispute resolution.

In the explanation of POJK 10/2022, it is stated that the background to the replacement of fintech lending regulations is, among other things, the background of the rapid development of fintech lending. Since 2016, fintech lending has grown rapidly, outpacing other financial services industries, as evidenced by an increase in the number of funders and recipients, as well as an increase in fund distribution. Furthermore, the characteristics of fintech lending as an information technology-based financial service institution necessitate infrastructure and supervision carried out by optimally utilizing information technology.

Based on these reasons, POJK 10/2022 has a wider scope than POJK 77/2016 previously published. POJK 10/2022 systematics consists of 18 chapters and 120 articles, while POJK 77/2016 only consists of 15 chapters and 52 articles. The greater number of chapters and articles in POJK 10/2022 is because the POJK contains several new provisions that were not previously regulated. The new provisions stipulated in POJK 10/2022, among others:

- 1) Utilization of foreign workers and outsourcing Operators may use foreign workers and outsource under the provisions of Article 18–Article 19;
- 2) Arrangements regarding joint funding service providers that are subject to sharia principles, including those contained in Article 10–Article 14 and Article 57;
- 3) The level of quality of the organizers' funding, which is categorized into current, special mention, substandard, doubtful, and loss. The classification of the organizers is contained in article 51;
- 4) Operators must follow good corporate governance principles such as transparency, accountability, responsibility, independence, and equality and fairness. Articles 53-54 outline the operator's responsibilities;
- 5) Transparency of operators, including the obligation of fintech lending service providers to report on the opening of office addresses other than the head office, complete with addresses, electronic systems, and coordinates of the global positioning system. The provisions are contained in Article 60—Article 61 and Article 63;
- 6) A mechanism for merger and consolidation among fintech lending service providers. The provisions are contained in Article 72–Article 76.
- 7) The mechanism for the dissolution and liquidation of companies that provide fintech lending services. These provisions are contained in Article 85–Article 97;
- 8) Collection mechanism for default recipients of funds. The rules regarding the transfer are contained in Article 102–Article 104;
- 9) According to articles 108 and 109, every fintech lending service provider must be a member of a fintech lending provider association recognized by OJK, namely the Indonesian Joint Funding Fintech Association (AFPI). In addition to the new provisions above, POJK 10/2022 also regulates several articles that adopt and amend the fintech lending regulatory provisions contained in POJK No. 77/2016. These provisions, among others, relate to regulations regarding:

TABLE I CHANGES IN FINTECH LENDING REGULATIONS IN POJK 77/2016 AND POJK 10/2022

No.	Description	POJK 77/2016	POJK 10/2022
1	Nomenclature	Information Technology-Based Lending and Borrowing Services (LPMUBTI)	Information Technology-Based Co-Financing Service (LPBBTI)

2	Organizing Legal Entity	Limited Liability Company and Cooperative	Limited Liability company
3	Organizer Status	Registered and authorization	Authorization
4	Establishment Capital	IDR 2.5 billion	IDR 25 billion
5	Foreign ownership	Not listed technical details of ownership	Only through stock exchange transactions
6	Operator Business Activities	One provider can provide conventional and sharia fintech funding services	Operators who carry out business activities conventional prohibited from carrying out business activities based on Sharia Principles, and vice versa
7	Risk Mitigation	Operators and Users must mitigate risk	Operators are required to implement risk management effectively for themselves and also for service users
8	Directors	Can only 1 person	There must be at least 2 members of the board of directors and 1 sharia supervisory board for sharia fintech organizers
9	Obligation to submit reports to the Financial Services Authority	Monthly and annual periodic reports	Monthly, annual and incidental reports

The changes to the provisions as referred to in the table above are a form of refinement of POJK 10/2022 against POJK 77/2016, which is based on the needs of the community, both service providers and service users, and the general public. However, several provisions have not been amended, two of which are the regulation of fintech lending service provider institutions and the arrangement of the agreement on the provision of fintech lending services. The two POJKs state that fintech lending service providers are included in the category of other financial service institutions (article 2 POJK 10/2022), which are equated with pawnshops and guarantee institutions. Second, the provisions regarding the agreement form the basis of the legal relationship between the parties in fintech lending services. The POJK 77/2016 and POJK 10/2022 mention two kinds of agreements, namely the agreement between the funder and the fintech lending service provider and the agreement between the funder and the fund recipient (article 30 POJK 10/2022).

5. CONCLUSIONS

The regulation on fintech lending entered a new phase with the repeal of the POJK 77/2016 with the POJK 10/2022 as a response to the development of the fintech lending industry in Indonesia, which continues to grow, thus requiring better regulations as a reference in the implementation of fintech lending services. There are several new provisions in the POJK 10/2022 that did not exist in the previous

regulations, including accommodation for the arrangement of fintech lending operations based on sharia principles; provisions governing the use of fintech lending; the use of foreign workers; and the arrangement of billing mechanisms for recipients of default funds. The POJK 10/2022 regarding Fintech Lending is better than the Fintech lending regulation in POJK 77/POJK.01/2016, so it is expected to create legal certainty, justice, and benefits.

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