CONSUMERS SPIRITUAL RIGHTS IN INDONESIA: A LEGAL STUDY OF SHARIA FINTECH IMPLEMENTATION IN THE CONSUMERS PROTECTION PERSPECTIVE

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Abstract

The Industrial Revolution 4.0 provided advances in financial services such as financial technology (fintech) innovations. The fintech concept that adapts to technological developments is expected to facilitate a more practical, secure, and modern financial transaction process, including digital-based financial services that are currently developing around the world. The implementation of fintech in Indonesia is divided into conventional fintech and sharia fintech which provides choices for the public in accessing financial services. The problem comes from the Muslim community who still do not believe in the implementation of the Islamic financial industry especially sharia fintech. The existence of skepticism from the community is the basis of this research. This research uses normative legal research methods to describe and explaining efforts to implement sharia fintech in protecting the consumers, especially the protection of "spiritual rights". This protection can be pursued through the spread of sharia principles in which sharia fintech financing services do not contain usury, uncertainty (ghoror), speculation (masyir), hiding damage (tadlis), harming other parties (dharar), and avoiding illegal matters (haram). Then the implementation of sharia fintech in protecting the customer's spiritual rights can also be pursued by applying financing arrangements that have been regulated by applicable regulations and by Fatwa DSN-MUI, such as contract/akad al-bai', akad ijarah, akad mudharabah, akad musyarakah, akad wakalah bi al ujah, and akad qardh.

Keywords: Consumer Protection; Spiritual Rights; Sharia Fintech; Indonesia

INTRODUCTION

The industrial revolution 4.0 provided technological advances that caused significant changes in people's lives. These changes occur in almost all aspects of life, both social, economic, communication, education, and others. These technological advancements can affect life positively or negatively.¹ For example in economic terms, financial service delivery services are also experiencing an evolution. New innovations in funding and financing have emerged.² Many non-bank financial services have emerged, which later came to be called the Non-Bank Financial Industry, which contained financial services

¹ Jadzil Baihaqi, Financial Technology Peer-To-Peer Lending Berbasis Syariah Di Indonesia, *TAWAZUN: Journal of Sharia Economic Law*, Vol.1 No.2, 116–132, 2018, p. 116.

² Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.3 No.2, 145–160, 2019, p. 156.

other than banking and capital markets such as insurance, pension funds, financial institutions, and microfinance institutions.³

Digital technology is a breakthrough and innovation in all economic activities. This can affect trade, agriculture, and specifically the financial sector.⁴ One sector that is currently being developed is financial technology or better known as fintech which is the latest innovation today. Financial technology is a business that focuses on providing financial service ideas that use software and are modern. Now fintech is getting global attention as a technology that will empower companies to compete effectively in the twenty-first century today. Governments in the world today have given attention to the challenges and designed policies and regulations to support the development of fintech.⁵

Fintech such as financing will greatly help in increasing people's access to various financial services products online, especially with various parties without having to know each other. The main advantages of fintech, include: 1). Availability of contract documents (agreements) in electronic form online for the benefit of the parties (e-contract); 2. Online risk assessment of parties; 3). Shipping billing information (collection) online; and 4). Provision of information on loan status to parties online. With these advantages, it is hoped that they can help facilitate the needs of financing recipients (borrowers) and funders (lenders).⁶

Globally, the fintech industry continues to grow rapidly, it's proved by the emergence of startup companies in this field and the amount of global investment in it. Especially in Indonesia, this business is growing very rapidly to attract the attention of all business people in Indonesia. In addition to the above fintech reasons, other reasons that attract the attention of this industry are: a). Facilitate the financial process; b). Supporting technological developments; c). Inspired by previous business people; d). More flexible than conventional financial businesses, and e). The use of Software technology, and Big Data as part of risk analysis. The implementation of fintech in Indonesia is divided into 2 (two) types, namely conventional fintech and the implementation of fintech by using sharia principles, giving several choices to the public, be they as borrowers or lenders. So, for the borrowers and lenders are given a scheme according to their needs but still according to the Islamic corridor, and must pay attention to the provisions made by the regulator in order to provide maximum service and protection and certainty for service users.⁷

³ Wizna Gania Balqis and Tulus Sartono, Bank Wakaf Mikro Sebagai Sarana Pemberdayaan Pada Usaha Mikro, Kecil Dan Menengah, *JURISDICTIE*, Vol.10 No.2, 215–231, 2019, p. 216.

⁴ Raden Ani Eko Wahyuni, Strategy Of Illegal Technology Financial Management In Form Of Online Loans, *Jurnal Hukum Prasada*, Vol.7 No.1, 27–33, 2020, p. 28.

⁵ Rohmatun Nafiah and Ahmad Faih, Analisis Transaksi Financial Technology (Fintech) Syariah Dalam Perspektif Maqashid Syariah, *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah*, Vol.6 No.2, 167–175, 2019, p. 168.

⁶ Achmad Basori Alwi, Pembiayaan Berbasis Teknologi Informasi (Fintech) Yang Berdasarkan Syariah, *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, Vol.21 No.2, 255–271, 2018, p. 257-258.

⁷ Nadia Qatrunnada and Indra Marzuki, Analisis Akad Murabahah Dan Wakalah Bil Ujah Pada Pembiayaan Berbasis Teknologi Informasi (Fintech) (Studi Kasus Di PT. Dana Syariah Indonesia), *Al-Mizan: Jurnal Hukum Dan*

Sharia fintech is one part of the financial industry that provides convenience for the public in financing by applying sharia principles.⁸ In general, the facilities offered by sharia fintech are financial innovations in the current digital financial era. Sharia fintech is a financial business model that simplifies the function of conventional intermediation (face to face) based on national law and Islamic law.⁹ The development of fintech peer to peer lending registered and/or licensed by the Financial Services Authority (OJK) in Indonesia, as of January 31, 2020, there was 164 (one hundred sixty-four) fintech in the form of peer to peer lending, with total assets of IDR. 3,036. 264,224,429, including 152 (one hundred and fifty-two) conventional peer to peer lending actors with assets of IDR. 2,985,645,653,280 and there are 12 (twelve) sharia peer to peer lending actors with total assets of IDR. 50,618,571,149.¹⁰ Whereas fintech in the form of peer to peer lending that is not registered and/or licensed by OJK is also not small, as of January 30, 2020, there were 120 (one hundred and twenty) unregistered and/or licensed fintech peer to peer lending operations.¹¹ This empirical fact proves that the sharia fintech financing business model is very potential and has good growth prospects in the future so that it can contribute to the growth of the national economy.

On the other hand, the development of sharia fintech is certainly a hope that we can expect in developing the Islamic economy. The development of financial institutions, especially sharia fintech, of course needs to be applied as something positive. Although sometimes there are still perceptions of Indonesian people who say that Islamic financial institutions only feature sharia symbols and labels in obtaining consumers, this is our common challenge as to how sharia fintech has integrity and spirit in the activities of the Islamic economy.¹²

Of 164 (one hundred and sixty-four) fintech with the form of peer to peer lending mentioned above, only 12 (twelve) fintech provide financing/loans based on Sharia principles. However, the opportunity for channeling Islamic financing is very high. This was identified by the OJK due to the lack of public understanding of the products of the Islamic financial industry and also the attitude of “skepticism” of the community towards the Islamic financial industry. In other words, opportunities for distribution of Sharia financing must be supported by public financial literacy on the financing product

Ekonomi Islam, Vol.3 No.2, 54–73, 2019, p. 57.

⁸ Trisadini Prasastinah Usanti, Prawitra Thalib, and Nur Utari Setiawati, Sharia Principles on Information Technology-Based Financing Services, *Yuridika*, Vol.35 No.1, 153–170, 2020, p. 159.

⁹ Raden Ani Eko Wahyuni, Perkembangan Ekonomi Islam Di Indonesia Melalui Penyelenggaraan Fintech Syariah, *Mahkamah: Jurnal Kajian Hukum Islam*, Vol.4 No.2, 184–192, 2019, p. 187.

¹⁰ Otoritas Jasa Keuangan, Statistik Fintech Lending Periode Desember 2019, < <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-Fintech-Lending-Periode-Desember-2019.aspx> >, Accessed 10 April 2020.

¹¹ Otoritas Jasa Keuangan, Siaran Pers: Awal Tahun Satgas Temukan 120 Fintech Peer-To-Peer Lending Dan 28 Entitas Penawaran Investasi Tanpa Izin, < <https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Siaran-Pers-Awal-Tahun-Satgas-Temukan-120-Fintech-Peer-To-Peer-Lending-dan-28-Entitas-Penawaran-Investasi-Tanpa-Izin.aspx> >, Accessed 15 April 2020.

¹² Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, Prinsip Syariah Dalam Penyelenggaraan Bank Wakaf Mikro Sebagai Perlindungan Hak Spiritual Nasabah, *Jurnal Jurisprudence*, Vol.9 No.2, 117–132, 2019, p. 119.

itself. For this reason, the purpose of this study is to explain the implementation of sharia fintech financing/loans in Indonesia and explain efforts to protect the spiritual rights of the borrowers/consumers.¹³ This research also aims to support financial literacy to the public and contribute to the literature on Islamic fintech based on national law and Islamic law.

The research method used this time is the normative (doctrinal) legal research method with descriptive-analytical research specifications. Descriptive analytical research is intended to illustrate, examine, and explain the problem to be studied, namely the implementation of sharia fintech in Indonesia as an effort to protect the spiritual rights of borrowers/consumers. The approach used in this research is the statutory approach and conceptual approach. The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. The conceptual approach moves from the views and doctrines that develop in the science of law. This study includes a literature study so this research emphasizes secondary data that is relevant to the topic being raised. The design of the study of literature studies is a series of activities to obtain secondary data such as primary, secondary, and tertiary legal materials through literature study as a data collection technique, which is then read, recorded and analyzed qualitatively to obtain actual conclusions.

DISCUSSION

Concept and Regulation of Fintech (Financial Technology) in Indonesia

The term related to fintech innovation was first put forward by Clayton M. Christensen and Joseph Bowerdi in 1995, which at that time was known as “Disruptive Innovation”. The term known as Disruptive Innovation, is an innovation that successfully transforms an existing system or market, by introducing practicality, ease of access, convenience, and economic costs. These disruptive innovations usually take certain market segments that are less desirable or considered less important to market authorities, but their innovation is breakthrough and can redefine existing systems or markets.¹⁴

The regulation of fintech in Indonesia is carried out by two independent state institutions namely Bank Indonesia and the Financial Services Authority (OJK). Bank Indonesia is tasked with regulating and overseeing financial technology-based payment system service businesses that issue “*dompot elektronik*” or e-wallet applications. The electronic wallet (e-wallet) is a virtual payment facility that can be used to store data

¹³ The consumer is every user of products and/or services available in the community, both for their own interests, family, other people, and other living creatures and not for trading. So, it is clear that the scope of consumers is broad, including consumers of products and services or also referred to as service. Services are divided into two, namely services related to the transferor transfer of products, and also pure services. See Adi Setiadi Saputra, Peer To Peer Lending Di Indonesia Dan Beberapa Permasalahannya, *Veritas et Justitia*, Vol.5 No.1, 238–261, 2019, p. 244.

¹⁴ Joseph L. Bower and Clayton M. Christensen, Disruptive Technologies: Catching The Wave, *Harvard Business Review*, Vol.73 No.1, 43–53, 1995, p. 43-45.

on cash, debit cards, credit cards, and electronic money. Whereas OJK is tasked with regulating and overseeing the technology business outside of monetary and payment systems, such as financial services or financial technology-based lending and borrowing businesses. Fintech users generally come from millennials who are classified as micro-small debtors who currently live more in big cities such as Jakarta, Bandung, and surrounding areas.¹⁵ Bank Indonesia and OJK are currently actively encouraging the growth of financial technology-based service businesses (fintech). This was done by Bank Indonesia and the OJK in response to the rapid development of information and communication technology. The presence of internet technological innovation and sophisticated equipment in the form of gadgets (smartphones, laptops, tablets, PCs) plays a major role in driving the progress of the fintech service industry worldwide. This global phenomenon is difficult to contain so it is better managed and controlled so that it is useful for the community and business people in the country. Therefore, the regulation is needed to regulate it.¹⁶

The term fintech which stands for financial technology has Article 1 number 1 of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology (PBI No.19/12/PBI/2017). Fintech is defined as the use of technology in the financial industry (financial) which is to produce new business models (products and services) to provide convenience to the public (consumers) and can also have an impact on financial system stability in Indonesia. The fintech concept that adapts technological developments is expected to facilitate a more practical, secure, and modern financial transaction process, including digital-based financial services that are currently developing in the world.

Based on Article 3 PBI No. 19/12 / PBI / 2017, the basic forms of organizing fintech include:

- 1) Payment System. PBI No. 19/12/PBI/2017 explanation, mentions the payment system includes authorization, clearing, final settlement, and payment implementation. Examples of running fintech in the payment system category include the use of block-chain or distributed ledger technology for fund transfers, electronic money (E-Money), electronic wallets, and mobile payments. E-Money or electronic money is money that is packaged into the digital world, so it can be said to be an electronic wallet. This money can generally be used to shop, pay bills, etc. through an application¹⁷;
- 2) Market Supporter. PBI No. 19/12/PBI/2017 explanation, said that what is meant by “market support” is a fintech that uses information technology and/or electronic

¹⁵ Iswi Hariyani, Perlindungan Hukum Dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin, *Jurnal Legislasi Indonesia*, Vol.14 No.3, 345–358, 2017, p. 348.

¹⁶ Kornelius Benuf, Rinitami Njatrijani, and Ery Agus Priyono, Pengaturan Dan Pengawasan Bisnis Financial Technology Di Indonesia, *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, Vol.11 No.2, 46–69, 2020, p. 48.

¹⁷ Asri Elies Alamanda and Tulus Sartono, Implementation of Brizzi as an E-Money Payment Tools in Indonesia, *Jurnal Hukum Novelty*, Vol.10 No.2, 130–139, 2019, p. 134.

technology to facilitate the provision of faster and cheaper information related to financial products and/or services to the public. Examples of running fintech in the market support category include providing data on comparative information on financial products or services;

- 3) Investment Management and Risk Management. PBI No. 19/12/PBI/2017 explanation, citing examples of the implementation of fintech in the category of investment management and risk management including the provision of online investment products and online insurance (risk management);
- 4) Loans, Financing, and Capital Provision. PBI No. 19/12/PBI/2017 explanation, citing examples of fintech operations in the lending, financing or funding categories, and capital raising services, among other information technology-based lending and borrowing services (peer-to-peer lending)¹⁸ and financing or fundraising based on information technology (crowd-funding)¹⁹; and
- 5) Other Financial Services. PBI No. 19/12/PBI/2017 explanation, stated that what is meant by “other financial services” is fintech in addition to the payment system category, market support, investment management and risk management, as well as loans, financing, and capital provision.

In general, the following forms of fintech regulatory policies by Bank Indonesia and OJK in Indonesia

- 1) Bank Indonesia Regulation Number 18/40/PBI /2016 concerning Implementation of Payment Transactions (PBI No. 18/40/PBI/2016). The substances regulated in this PBI include a). The organizer in processing payment transactions; b). Licensing and approval in organizing payment transaction processing; c). Obligations in the processing of payment transaction processing; d). Report; e). Transfer of payment system service licenses; and f). Supervision, prohibition, and sanctions. This PBI also regulates fintech in the payment system namely: 1). Electronic Wallet (hereinafter referred to as Electronic Wallet) is an electronic service to store data/information of payment instruments including payment instruments using cards and/or electronic money, which can also hold funds, to make payments; and 2). Payment Gateway is an electronic service that allows merchants to process payment transactions using payment instruments using cards, electronic money, and/or Proprietary Channels;
- 2) Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Implementation of Financial Technology (PBI No. 19/12/PBI/2017). This PBI regulates the basic forms of running fintech and expressly states the definition of financial technology is the use

¹⁸ Budiharto, Sartika Nanda Lestari, and Gusto Hartanto, The Legal Protection Of Lenders In Peer To Peer Lending System, *Law Reform*, Vol.15 No.2, 275–289, 2019, p. 279.

¹⁹ Na'im Fajarul Husna and Kukuh Tejomurti, Urgensi Penerapan Regulatory Sandbox Oleh Otoritas Jasa Keuangan Sebagai Upaya Perlindungan Hukum Bagi Pemodal Equity Crowdfunding, *Jurnal De Jure*, Vol.12 No.1, 54–65, 2020, p. 58.

- of technology in the financial system that produces new products, services, technology and/or business models and can have an impact on monetary stability, financial system stability, and/or efficiency, smoothness, security and reliability of payment systems;
- 3) Regulation of the Members of the Board of Governors Number 19/14/PADG/2017 concerning Regulatory Sandboxes (PADG Regulatory Sandbox). The PADG Regulatory Sandbox was issued in connection with the promulgation of PBI No. 19/12/PBI/2017. This PADG Regulatory Sandbox contains technical arrangements for the material provisions stipulated in PBI No. 19/12/PBI/2017 to clarify and provide guidance in the implementation of a limited trial space (Regulatory Sandbox). The principles governed in the PADG Regulatory Sandbox are a). The scope of the operation of fintech; b) the procedure for determining the trial in the Regulatory Sandbox; c). Trial process in Regulatory Sandbox; d). The results of trials in the Regulatory Sandbox; and e). License requirement as a Payment System Service Provider;
 - 4) Regulation of the Members of the Board of Governors Number 19/15/PADG/2017 concerning Procedures for Registration, Submission of Information and Monitoring of the Implementation of Financial Technology. The substance of this regulation is in connection with the promulgation of PBI No. 19/12/PBI /2017. This PADG contains technical arrangements for the material provisions stipulated in PBI No. 19/12/PBI/2017 to clarify and provide registration guidelines for fintech organizers;
 - 5) Bank Indonesia Regulation No. 18/17/PBI/2016 dated August 29, 2016 concerning the Second Amendment to Bank Indonesia Regulation Number 11/12/PBI/2009 concerning Electronic Money. Electronic Money is a payment instrument that meets the following elements: a). issued based on the value of money paid in advance by the holder to the issuer; b). the value of money is stored electronically in a medium such as a server or chip; c). used as a means of payment to traders who are not the issuers of electronic money; and d). the value of electronic money deposited by holders and managed by the issuer is not a deposit as referred to in the law governing banking;
 - 6) Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This POJK regulates the implementation of information technology-based lending and borrowing services in a peer to peer pending manner, in which fintech peer to peer lending is the organization of financial services to bring together lenders and loan recipients in the context of entering into a loan agreement in rupiah (IDR) directly through an electronic system using the internet network; and
 - 7) Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovations in the Financial Services Sector. This regulation is issued by OJK given the rapid technological advances in the digital financial industry that cannot be ignored and need to be managed to provide maximum benefits for the benefit of the

community. This regulation was also issued as an effort to support financial services that are innovative, and other financial services.

The fintech regulations were issued given the rapid technological advances in the digital financial industry that cannot be ignored and need to be managed to provide maximum benefits for the benefit of the community. With the existence of these regulations, it is expected that digital financial innovations need to be directed to produce digital financial innovations that are responsible, secure, prioritizing consumer protection and have well-managed risks. This regulation was also issued as an effort to support financial services that are innovative, fast, cheap, easy, and broad and to increase financial inclusion, investment, financing and other financial services.

Efforts to Protect the Spiritual Rights of Consumers (Fund Borrowers) in Sharia Fintech

The presence of conventional fintech and sharia fintech on the one hand makes it easy for consumers to more freely choose products that they want, but on the other hand fintech brings a negative impact, where consumers can be the object of business activities to get the highest profit from businesses.²⁰ This phenomenon causes that the position of consumers is not balanced with business actors and is in a weak position. Therefore, it is necessary to guarantee legal protection for fintech consumers.²¹ The law aims to ensure legal certainty in society and the law must also be based on justice, namely the principles of justice of the community.

The existence of consumer protection against the implementation of sharia fintech is an inseparable part of healthy business activity. In business activities, in this case, healthy sharia fintech business, there is a balance of legal protection between consumers and sharia fintech providers. The absence of balanced protection causes consumers to be in a weak position.²² Weak consumers and many disadvantaged conditions require increased efforts to protect so that consumer rights can be upheld.²³ But on the contrary, it should be noted that in providing protection to consumers, it should not just be shutting down businesses, because the existence of businesses is essential in the country's economy. Therefore, provisions that provide protection to consumers must also be balanced with provisions that provide protection to business actors, so that consumer protection does

²⁰ Ninis Nugraheni and Qonitah Annur Aziza, The Existence Of Collateral In Credit Through Peer-To-Peer Lending Services, *Yustisia Jurnal Hukum*, Vol.9 No.1, 98–115, 2020, p. 103.

²¹ Pranoto, Munawar Kholil, and Kukuh Tejomurti, Fintech Lending: Challenge And Opportunities Of The Indonesia's Loan Unbanked To Develop The Inclusive Financial Industry, *Hang Tuah Law Journal*, Vol.3 No.2, 105–119, 2019, p. 108.

²² Hari Sutra Disemadi and Paramita Prananingtyas, Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine), *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol.8 No.3, 286–402, 2019, p. 287.

²³ Valensia Valensia and Tulus Sartono, Product Standardization Through "SNI" As A Form Of Consumer Protection In Indonesia, *Legality : Jurnal Ilmiah Hukum*, Vol.28 No.1, 1–10, 2020, p. 5.

not reverse the position of consumers from weak positions to become stronger, and conversely business actors that become weaker.²⁴

Consumer protection in general or borrowers (consumer) protection in sharia fintech has been regulated in Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). The Consumer Protection Law explains that consumer rights include the right to comfort, security and safety in consuming goods and or services, the right to choose goods and or services and to obtain said goods and or services by the exchange rate and conditions and guarantees promised right to treated or served properly and honestly and not discriminatory, the right to get compensation, compensation and or replacement, if the goods and or services received are not by the agreement or not as they should, and so on.

Consumer protection is an effort that guarantees legal certainty to give to consumers. The consumer is every user of goods and/or services available in the community, both for the benefit of themselves, family, other people, and other living creatures and not for trading. Consumers are protected from the actions of producers of goods or services, importers, distributors, sellers, and every party who is in the path of trading goods or services, which are generally referred to by the name of the business actor. The objectives of consumer protection include: 1). Increasing consumer awareness, ability, and independence to protect themselves; 2). Raise the dignity of consumers by avoiding negative access to the use of goods and services; 3). Increasing the empowerment of consumers in choosing, determining, and claiming their rights as consumers; 4). Creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information; 5). Raising awareness of businesses about the importance of consumer protection so that honest and responsible attitudes in the business grow; and 6). Improving the quality of goods and services that ensure the continuity of the business of producing goods and services, health, comfort, security, and consumer safety.

In the perspective of Islamic law, every transaction, whether carried out by individuals or institutions in any field, including the economic field, is bound by Islamic values. In everyday terms, these actions are bound by “*halal-haram*” provisions²⁵, while the issue of “*halal-haram*” is one of the scopes of legal study. Therefore, it shows the close relationship between law, economics, and sharia. The use of the word sharia as “*fiqh*” looks specifically at the inclusion of Islamic sharia as a source of legislation in several Muslim countries, Islamic banking, Islamic insurance, Islamic economics. Sharia principles are based on the values of justice, benefit, balance, and universality

²⁴ Hendro Nugroho, Perlindungan Hukum Bagi Para Pihak Dalam Transaksi Pinjaman Online, *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora*, Vol.7 No..2, 328–334, 2020, p. 331.

²⁵ Zaka Firma Aditya and Sholahuddin Al-Fatih, Analisis Yuridis Kedudukan Hukum Lembaga Pemberi Fatwa Halal Di Beberapa Negara, *Jurnal Wacana Hukum*, Vol.25 No.1, 68–79, 2019, p. 70.

(*rahmatanlil'alam*).²⁶ These values are applied in the fintech arrangement, so it is called sharia fintech.

Spiritual rights are the rights of all people. However, if it is related to the main focus of this research in the field of consumer protection in sharia fintech, then the spiritual right in this study is addressed to sharia fintech customers as consumers. The Consumer Protection Law has recognized spiritual rights.²⁷ This is stated in Article 2 of the Consumer Protection Law concerning the principle of consumer protection, namely consumer protection based on benefits, justice, balance, security and consumer safety, as well as legal certainty, which Explanation of Article 2 of the Consumer Protection Law states the principle of balance is intended to provide a balance between interests consumers, business people, and government in the material or spiritual sense. In the Elucidation of this Article, the spiritual aspect has been clearly stated and is the basis for consumer protection. But the problem is, when formulating consumer rights, the spirituality aspect of rights is not explicitly accommodated, as intended in the principle of balance. Consumer rights in Article 4 of the Consumer Protection Law, are only described in general and are not related to rights relating to the spiritual (religious) aspects. The use of the term spiritual also serves to introduce the breadth of the scope of the Consumer Protection Law which targets not only material issues, but also spiritual aspects. From this new term, it can be understood that spiritual rights are the rights of everyone, not limited to those who are Muslim, because spirituality is one aspect of humanity itself that is universal.²⁸

Related to the implementation of sharia fintech in Indonesia, each customer has the right to legal certainty in guaranteeing the protection of his rights as mentioned in Article 1 Paragraph (1) of the Consumer Protection Law. The intended protection includes general protection and special protection. General protection is material protection in the form of customer fund safety, information transparency, and advocacy, while special protection is the customer's spiritual protection. The spiritual protection in question is one of the important components in the economic life of the Islamic religion, namely *muamalah*. Speaking of spiritual protection, it can be said that every customer has a spiritual right that needs to be protected. Spiritual rights are religious rights that are owned by every human being.²⁹ Perspective of Islamic law in consumer protection, Ro'fah Setyowati said that consumers of the Islamic financial industry have spiritual or religious rights, in Indonesia those rights are guaranteed or protected through the form of sharia principles in the administration of sharia-based financial institutions.

²⁶ Ro'fah Setyowati, Perlindungan 'Hak Spiritual' Dalam Penyelesaian Sengketa Perbankan Syariah: Praktik Di Malaysia Dan Indonesia, *Share: Jurnal Ekonomi Dan Keuangan Islam*, Vol.5 No.2, 124-154, 2016, p. 129.

²⁷ Ro'fah Setyowati, *Ibid.*, p. 131.

²⁸ Ro'fah Setyowati, *Ibid.*, p. 132.

²⁹ Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, *Op.Cit.*, p. 127.

This thinking arises from the spiritual aspects inherent in every person, especially in consumers.³⁰

Protection of the spiritual rights of consumers, especially Muslims in Indonesia related to financial industry management can be in the form of the implementation of Islamic principles in it (Islamic legal values).³¹ The need to live a good economic life based on sharia principles needs to be supported and paid attention to by the government, society, or community associations. Implementation of this support can be through regulations, and an active role related to the spiritual rights of the community. As mentioned above in the perspective of consumer protection, the application of sharia principles in the Islamic financial industry especially sharia fintech is a form of guaranteeing the protection of spiritual rights.

The need to live a good economic life based on sharia principles needs to be supported and attention from the government and the community.³² Implementation of this support can be through regulations, and an active role related to the spiritual rights of the community. As mentioned above in the perspective of consumer protection, the application of sharia principles in the Islamic financial industry especially sharia fintech is a form of guaranteeing the protection of spiritual rights. The spiritual nature itself has been explained in the principle of the balance of consumer protection in the Consumer Protection Law. Compliance with sharia principles in sharia fintech has also been regulated in various laws and regulations relating to the implementation of sharia fintech.³³

As an effort to protect the spiritual rights of consumers/borrowers, sharia fintech is therefore obliged to implement specific criteria that are appropriate and based on the Qur'an and Hadith³⁴, these criteria do not contain elements of usury, uncertainty (*ghoror*), speculation (*masyir*), hiding damage/defective (*tadlis*), harming other parties (*dharar*), and avoiding unlawful things (*haram*).³⁵ Other criteria in the implementation

³⁰ Ro'fah Setyowati, Indah Purbasari, and Encik Muhammad Fauzan, Consumers Spiritual Rights in the Islamic Banking Dispute Out of Court Settlement, *Journal of Social Studies Education Research*, Vol.9 No.4, 334–351, p. 334.

³¹ Ro'fah Setyowati, Lastuti Abubakar, and Nunung Rodliah, Sharia Governance On Islamic Banking: Spiritual Rights Perspective On Consumer Protection In Indonesia, *Diponegoro Law Review*, Vol.2 No.1, 227–244, 2017, p. 235.

³² Hida Hiyanti and others, Peluang Dan Tantangan Fintech (Financial Technology) Syariah Di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Vol.5 No.3, 326–333, 2020, p.329.

³³ Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, *Op.Cit.*, p. 127-128.

³⁴ Dodi Yarli, Analisis Akad Tijarah Pada Transaksi Fintech Syariah Dengan Pendekatan Maqhasid', *YUDISIA, Jurnal Pemikiran Hukum Dan Hukum Islam*, Vol.9 No.2, 245–256, 2018, p. 249.

³⁵ Siska Lis Sulistiani, Aspek Hukum Fintech Syariah Untuk Peningkatan Findrising Wakaf Uang Di Indonesia, *Jurisprudensi, Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam*, Vol.11 No.1, 99–120, 2019, p. 103. if maximized by all aspects including legal instruments and technological advances in socializing the urgency and benefits of waqf for the economic, social and religious progress of the community. The method used is a normative juridical method through primary, secondary and tertiary legal data relating to fintech and endowments of money. The findings of this study are that the development of legal related to waqf fintech can be done from both national law and islamic law in finding endowments for benefit as long as they maintain harmony and waqf requirements, and maintain the core of waqf assets collected to be developed in other more useful forms.", "author": [{"dropping-particle": "", "family": "-Sulistiani", "given": "Siska Lis", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "Jurisprudensi: Jurnal Ilmu Syariah, Perundang-undangan, Ekonomi Islam", "id": "ITEM-1", "issue": "1", "issued": {"date-parts": ["2019", "10", "23"]}, "page": "99-120", "title": "ASPEK HUKUM FINTECH SYARIAH UNTUK PENINGKATAN FINDRISING WAKAF UANG DI INDONESIA", "type": "article-journal", "volume": "11", "uris": ["http://"]

of Islamic fintech have been regulated in the *Fatwa Dewan Syariah Nasional Majelis Ulama* No. 117/DSNMUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles (DSN-MUI Fatwa No. 117/DSN-MUI/II/2018).

DSN-MUI Fatwa No. 117/DSN-MUI/II/2018, regulates 6 (six) models of financing services that are permitted in sharia fintech operations, namely as follows:

- 1) Factoring financing is a financing model in the form of service for collecting accounts receivable based on invoices, whether or not accompanied by a bailout (qardh) given to business actors who have bills to third parties (payers);
- 2) Financing of procurement of goods for third party orders (purchase orders) is a financing model given to business actors who have obtained orders or work orders for procurement of goods from third parties;
- 3) Financing of goods procurement for business actors who sell online (online seller) is a financing model provided to business actors conducting online trading transactions at information technology-based trading service providers (e-commerce platforms/ marketplaces) that have collaborated with sharia fintech providers;
- 4) Financing of goods procurement for business actors who sell online with payment through payment gateway providers is a financing model provided to business actors (sellers) who actively sell online through channel distribution that they manage themselves and payments made through providers online payment authorization services (payment gateway) in collaboration with the organizer of sharia fintech;
- 5) Financing for employees is a financing model provided to employees who need consumptive financing with a salary-cutting cooperation scheme through employer institutions; and
- 6) Community-based financing is a model of financing provided to community members who need financing, with the financing scheme coordinated through the community coordinator.

DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 also regulates agreements or contracts for financing in sharia fintech. The contract/*akad* must fulfill the principles of balance, fairness and fairness by sharia principles and applicable laws and regulations.³⁶ The contract/*akad* used is obligatory with characteristics of financing services, including: *First*, the *akad al-bai'* (sale-purchase), is the contract between the seller and the buyer resulting in the transfer of ownership of the object being exchanged (goods and prices); *Second*, the *akad ijarah*, is the transfer contract on the use rights (benefits) of an item or service

www.mendeley.com/documents/?uuid=f3bdecc0-7314-4178-a052-7e3627ba8ee0]]], "mendeley": {"formatted-Citation": "Siska Lis Sulistiani, 'ASPEK HUKUM FINTECH SYARIAH UNTUK PENINGKATAN FINDRISING WAKAF UANG DI INDONESIA', <i>Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam</i>, 11.1 (2019

³⁶ Dhiya Tsuroyya and Muzayyanah, Analisis Pelaksanaan Musyarakah Pada Layanan Financial Technology Peer To Peer Lending Syariah Di Indonesia (Studi PT Syarfi Teknologi Indonesia), *Al-Mizan, Jurnal Hukum Dan Ekonomi Islam*, Vol.3 No.2, 32-53, 2019, p. 41.

within a certain time with payment of *ujrah* or wages; *Third*, the *akad mudharabah*, is a cooperation contract between a business owner (*shahibual-maaf*) that provides all capital with the manager and business profits, divided between them according to the ratio agreed upon in the contract. Meanwhile the losses are borne by the owners of capital; *Fourth*, the *akad musyarakah*, is a contract of a cooperation agreement between two or more parties for a certain business, in which each party contributes venture capital funds. In the concept of this contract there is a provision of profits divided according to the agreed ratio or proportionally, while the loss is borne by the parties proportionally; *Fifth*, the *akad wakalahbialujrah* is a contract of the delegation of power to carry out certain legal actions accompanied by compensation in the form of *ujrah* (wages); and *Sixth*, *akad qardh*, is a contract of the loan agreement from the lender provided that the loan recipient is required to return the money received by the agreed time and method.

Provisions for the contract/*akad* in the DSN-MUI Fatwa No.117/DSN-MUI/II/2018, is a clear form of regulation related to guaranteeing the protection of spiritual rights from the implementation of financing by sharia fintech. Provisions regarding the use of contracts/*akad* based on the DSN-MUI Fatwa constitute an effort to fulfill sharia principles in the implementation of sharia fintech. Attention to the protection of spiritual rights is needed to build the Islamic financial industry, especially sharia fintech so that it has high credibility, so as to reduce skepticism from the public regarding the Islamic financial industry in Indonesia. This high credibility is also intended to gain public trust that sharia fintech upholds the principles of sharia in the protection of spiritual rights.

CONCLUSION

In consumer protection perspective, the Consumer Protection Law in Indonesia has recognized spiritual rights. This is found in the principle of protection of the balance-based concession. The Consumer Protection Law explains the principle of balance intended to provide a balance between the interests of consumers, businesses, and the government in the material or spiritual sense. In this explanation, the spiritual aspect has been clearly stated and is the basis for consumer protection. The use of the term spiritual also serves to introduce the breadth of the scope of the Consumer Protection Law which targets not only the issue of material consumer rights, but also consumer rights related to spiritual aspects. From this new term, it can be understood that spiritual rights are the rights of everyone, not limited to those who are Muslim, because spirituality is one aspect of humanity itself that is universal.

The implementation of sharia fintech in an effort to provide protection for spiritual rights to consumers/borrowers Muslim can be done by applying sharia principles in the conduct of its business. Therefore, sharia fintech is obliged to implement special criteria that are appropriate and based on the Koran and Hadith, these criteria do not

contain the element of *riba*, uncertainty (*ghoror*), speculation (*masyir*), hiding damage/defects (*tadlis*), harming other parties (*dharar*), and avoid *haram*. Other criteria in the implementation of sharia fintech have been regulated in the Fatwa DSN-MUI No. 117/DSN-MUI/II/2018. The implementation of sharia fintech in protecting the consumers/borrowers spiritual rights can also be pursued by applying financing arrangements that have been regulated in accordance with applicable provisions and in accordance with Fatwa DSN-MUI, such as contract/*akad al-bai'*, *akad ijarah*, *akad mudharabah*, *akad musyarakah*, *akad wakalah bi al ujah*, and *akad qardh*.

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