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Legal Protection Against Lender In Fintech Peer to Peer Lending Sharia

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Abstract

The purpose of this study is to determine the legal protection of lenders in Sharia P2PL, which is trying to offer an improved concept of legal protection at POJK No.10/ OJK.05 / 2022. This research method uses empirical juridical research through primary data interviews with lenders and observation of providers, including Dana Syariah, Alami Syariah, Ammana, Duha Syariah, Qazwa, Ethics, Investree Syariah, and Papitupi Syariah. The results of this study indicate that financing by lenders in Sharia peer-to-peer lending, the organizers have implemented the article 100 of POJK Number 10/POJK.05/2022, including the principles of transparency, fair treatment, as well as confidentiality and security of consumer data. Several factors, such as facilities, community, and culture, support this. This indicates efforts on improving legal protection on lender perspective. However, other consumer protection principles, including the principles of reliability and complaint handling and simple, fast, affordable consumer dispute resolution, still need to be improved. Eventually, there are suggested concept that can increase legal protection for lenders in terms of the obligation to use insurance and also the use of fiduciary guarantees to further increase legal protection for lenders..

Keywords: Fintech; Legal Protection; P2PL; Sharia Fintech

1. INTRODUCTION

In Indonesia, Sharia financial technology (from now on referred to as Sharia fintech), an alternative to conventional fintech, is now known.¹ The estimated sharia fintech market size for OIC countries in 2021 is 79 billion US dollars of the global fintech market size, based on transaction volume. According to the Research Economic Islamic Development Bank, Sharia fintech contributes to the growth of financial services.²

Challenges still hamper the presence of Sharia fintech because the development of Sharia fintech is not balanced with the speed of regulations being formed.³ The reality of sharia fintech regulation is currently regulated in POJK Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI) (from now on referred to as POJK No.10/POJK.05/2022), which replaces the old regulations, namely POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (from now on referred to as POJK No.77/POJK.01/2016).

The importance of this research is by far the focus of research has been on legal protection for borrowers, not fund providers. Therefore, this research tries to answer the challenges faced by P2PL sharia which has several challenges faced, especially from the legal aspect. Legal protection for lenders is very important because the availability of funds for the continuity of P2PL operations is very dependent on the health of funds from lenders.

¹ A N Rohman, D Fitriana, and W R Aidy, "Economic Security and Sharia Fintech Regulation in Indonesia: A Portrait of Strengthening the Sharia Business Ecosystem," *Fiat Justisia: Jurnal Ilmu ...* 17, no. 3 (2023): 243–64, <https://doi.org/10.25041/fiatjustisia.v17no3.2919>.

² Ahmad Munir Hamid et al., "Economic Empowerment Of Ummah Through Sharia Fintech:Literature Review," *International Journal of Scientific Research and Management (IJSRM)* 11, no. 11 (2023): 5289–5301, <https://doi.org/10.18535/ijrm/v11i11.em02>.

³ Arwa Al-Hamdany and Ahlam Fadhil Mahmood, "Fintech Innovations, Scope, Challenges, and Implications in Islamic Finance: A Systematic Analysis," *International Journal of Computing and Digital Systems* 13, no. 1 (March 16, 2023): 1–15, <https://doi.org/10.12785/ijcds/130147>.

Peer-to-peer lending (P2PL) services involve three parties in transactions: the fund provider (investor), the P2PL platform, and the recipient. P2PL services continue to develop rapidly, resulting in fintech companies emerging with the primary mission of meeting people's needs. In P2PL, funders can choose quality fund recipients because the P2PL organizers analyze them first. The Organizer also applies the same system to the fund provider, so the credibility of the fund recipient or investor is guaranteed.⁴

⁶¹ This segmentation makes P2PL organizers focus and try to understand the ecosystem to support the development of the fintech industry.⁵ The highest accumulation of West Java Province currently has the receiving funds, which is presently achieved by West receiving funds. Meanwhile, the province with the most minor accumulated with the most minuscule accumulation of Sulawesi, namely 293 accounts receiving funds.

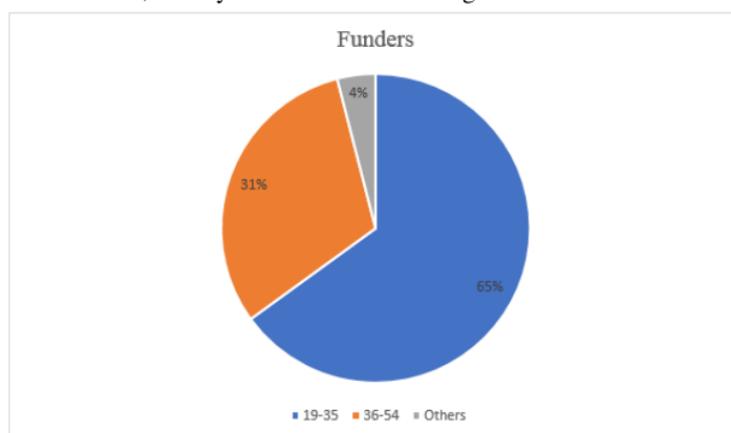


Figure 1. Percentage of Funders by Age

Based on the figure 1 the number of P2PL fintech funders is increasing and dominated by millennials. According to Amarta's social accountability report, segmentation lender Amarta is filled with around 68% of millennials. This is due to the characteristics of digitally literate millennials who like technology-based investments that are practical and easy.⁶

Based on Financial Services Authority (OJK) fintech statistics, until July 2022, the P2PL fintech industry recorded a TKB90 of 97.47%. This means that around 2.53% of funding defaults or fails to be paid within 90 days of maturity. Does this mean the funds are lost? If TKB90 is less than 100%, there is funding whose successful payment has been fulfilled more than 90 days from the due date. However, the financing will still return. It is

⁴ Umar Habibu Umara and Muhammad Aminu Umar, "Integrating Islamic Fintech into Islamic Social Finance to Revive the Growth Concern of MSMEs in the COVID-19 Era," *Global Review of Islamic Economics and Business* 10, no. 1 (2022): 1–13, <https://doi.org/https://doi.org/10.14421/grieb.2022.101-01>.

⁵ Septarina Budiwati, Muhammed Junaidi, and Wisnu Tri Nugroho, "The Principle of Pacta Sunt Servanda in Fintech Transactions Is Reviewed Through The Perspective of Ushul Fiqh," *Al-Iktisab: Journal of Islamic Economic Law* 4, no. 1 (May 12, 2020): 47, <https://doi.org/10.21111/al-iktisab.v4i1.4350>.

⁶ Arvind Ashta and Heinz Herrmann, "Artificial Intelligence and Fintech: An Overview of Opportunities and Risks for Banking, Investments, and Microfinance," *Strategic Change* 30, no. 3 (May 10, 2021): 211–22, <https://doi.org/10.1002/jsc.2404>.

necessary to mitigate the risk of default by guaranteeing credit insurance. Ivan Nikolas Tambunan, as CEO of Akseleran, realizes the need for this. Realizing the many dangers that can occur in P2PL activities, such as the risk of payment failure and the risk of the platform going bankrupt/bankrupt, each platform tries various ways to avoid them. One way is to implement a guarantee and insurance system.⁷

Research conducted by Fithria in 2022 discusses and analyzes the application of sharia contracts used in Fintech P2PL in Indonesia.⁸ Other research conducted by Rusadi and Benuf in 2020 explains the problems faced by MSME players, which are limited access to financing. Therefore P2PL tries to provide answers as a problem for MSME.⁹ Research conducted by Sugiarto and Disemadi in 2020 describes and explains the efforts of organizing Islamic fintech to protect consumers, especially the protection of “spiritual rights.”¹⁰ Based on the type, default includes late fulfilling achievements that could be better or not by what was promised or not carrying out achievements. Providing P2PL services carries the risk of giving rise to legal problems, namely the risk of Failure to pay, which will impact the fund provider's losses. Previous researches emphasize on the P2PL sharia mainly in the consumer protection and also on the problem related to payment to MSME. This article mainly examines about legal protection on the lender perspective that which is missing from the discussion in other articles. Based on the background above, the aim in this study is regarding the legal protection of lenders in sharia P2PL fintech. In addition, this article tries to offer an improved concept of Legal Protection that has been regulated in POJK Number 10/POJK.05/2022 concerning Information Technology Based Joint Funding Services.¹¹

2. METHOD

This research is empirical juridical research, namely studying social phenomena related to legal practice.¹² Empirical juridical research examines how normative provisions are realized in reality. This way, we will see the relationship between law and extra-legal research-related factors.¹³ Primary data was obtained using two methods: interviews

⁷ Reem Saleh Ali et al., “Peer-to-Peer Online Lending Sentiment Analysis,” *Applied Mathematics and Computational Intelligence* 25, no. 2 (2023): 59–119, <https://doi.org/10.1016/j.amci.2023.101388>.

⁸ Annisa Fithria, “Exploring the Application of Sharia Contracts on Islamic Fintech Peer-to-Peer Lending in Indonesia,” *Al-Hikmah: International Journal of Islamic Studies and Human Sciences* 5, no. 6 (2022): 31–56, <https://doi.org/10.46722/hikmah.v5i6.327>.

⁹ Fry Anditya Rahayu Putri Rusadi and Kornelius Benuf, “Fintech Peer to Peer Lending as a Financing Alternative for the Development MSMEs in Indonesia,” *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (2020): 23–4, <https://doi.org/10.22219/ljih.v28i2.12865>.

¹⁰ Irwan Sugiarto and Ari Sutra Disemadi, “Consumers Spiritual Rights In Indonesia: A Legal Study Of Sharia Fintech,” *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 3 (2020): 145–60, <https://doi.org/http://jurnalius.ac.id/ojs/index.php/jurnalIUS>.

¹¹ Wardah Yuspin and Ari Dewi Putri, “Reconstruction of Law Guarantee in Akad Mudharabah: A Study Takwil Interpretation,” *International Journal of Innovation, Creativity and Change* 12, no. 1 (2020): 494–510, https://api.elsevier.com/content/abstract/scopus_id/85083057442.

¹² Kelik Wardiono and Wardah Yuspin, “The Sharia Microfinance and the Counter-Hegemonic Movement: Examining the Legal Norms Regulating Aspects of Institutional and Business Activities in Surakarta,” *Humanities and Social Sciences Reviews* 7, no. 3 (2019): 45–51, <https://doi.org/10.18510/hssr.2019.737>.

conducted with eleven funders on ⁶⁶ the Sharia P2PL platform and observations on the Sharia P2PL platform. Interviews were conducted from August 2022 to October 2022 using semi-structured interviews with a list of questions that had been prepared in advance but developed along with the interview. Meanwhile, observations were conducted on seven Sharia P2PL platforms: Ammana, Dana Syariah, Alami Sharia, Duha Sharia, Qazwa, Ethics, and Investree Syariah. This method focuses on empirical research by examines data in the P2PL Sharia because this data can provide a valid description of how legal aspects, ² specially in the protection of lenders, apply in P2PL sharia.

3. RESULTS AND DISCUSSION

3.1 Legal Protection for Funders (Lender) on Fintech P2PL Syariah

Related to changes to existing regulations, there is an increase in lenders' legal protection as seen in Article 100 POJK No.10/POJK.05/2022, consumer protection has been regulated as per Article 100 paragraph (1), which requires the following principles to be implemented: a) Transparency; b) Fair treatment; c) Reliability; d) Confidentiality and security of consumer data/information; And Handling complaints and resolving consumer disputes simply, quickly, and cheaply.

The provisions in Article 100 paragraph (2) POJK No.10/POJK.05/2022 explain that POJK implements consumer protection as referred to in paragraph (1) regarding consumer protection ²⁰ the financial services sector. The complete implementation of consumer protection in the financial services sector is regulated in POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector (from now on referred to as POJK No.6/POJK.07/2022).

In General Provisions Article 1 point 3 POJK No.6/POJK.07/2022 ³ explains that consumers are parties who place their funds and/or utilize the services available at financial service institutions, including customers in banking, investors in the capital market, holders of insurance policies, and participants in pension funds, based on laws and regulations in the financial services sector. Based on the applicable OJK regulations in ¹⁹ this case, it can be understood that fund providers include consumers who have placed their funds and/or utilized the services available at financial services institutions, namely P2PL providers. In the explanation of POJK No.6/POJK.07/2022, it is explained that the form of responsibility for consumer losses includes compensation.¹⁴

In LPBBTI Protection, to protect consumer interests, there is a first principle, Transparency, contained in Article 101 POJK No.10/POJK.05/2022. The principle of Transparency contains elements of disclosure and provision of Information on financing service products to consumers by providers. The scope of Transparency is more directed at Information on financing products and services, such as characteristics, benefits, risk of loss, and product and/or service costs and terms and conditions. Information on financing

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¹³ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁴ Sylvia Jan ⁴⁴wati, "Responsibilities of Financial Technology Company Due To Failure to Pay By Loan Recipients," *Jambura Law Review* 3, no. 2 (2021): 198–213, <https://doi.org/10.33756/jlr.v3i2.11267>.

services must be prepared and provided in writing in the form of a summary of Information, which is conveyed completely, concisely, accurately, honestly, reliably, comparable, not misleading, easily accessible, and timely so as to avoid mis-spelling when offering to fund and prevent the occurrence of financial loss.¹⁵

Secondly, in POJK No.10/POJK.05/2022, there is a principle of reliability, namely that in providing funding, organizers are required to apply the principle of reliability, which is an element of trustworthiness or testing. A practical, tested, and reliable risk management scheme must be demonstrated as in Article 35, paragraph (1) concerning risk management by the Organizer. Furthermore, Article 35, paragraph (4) explains that risk mitigation activities for users must at least include the following: a) Conduct risk analysis of funding proposed by fund recipients; b) Verify user identity and document authenticity; c) Collecting funds distributed optimally; d) Facilitate the transfer of funding risk; d) Facilitate risk transfer over the collateral object if there is a collateral object.

With risk management effectively organized, the Organizer can increase consumer confidence in the company, considering that competition among peers is tight, so the Organizer must make efforts to increase consumer confidence in the company. Electronic systems allow parties to transact without meeting face-to-face, allowing for a potential market. Therefore, in POJK No.10/POJK.05/2022, confidentiality principles and consumer data/information security exist. In data confidentiality, consumers need to pay attention to existing data individual¹⁹ or corporate, then individual or corporate data is prohibited from being shared unless the consumer gives written consent, fulfills the procedures for written consumer consent in the form of choice or consent, by written policies and procedures regarding personal data as outlined in standard operational procedures.

Regulations regarding consumer data have been regulated in Article¹¹ in Chapter VI concerning the Electronic System for Implementing LPBBTI as stated in POJK No.10/POJK.05/2022 and in Article 47 of POJK No.10²⁹POJK.05/2022. Based on the explanation of POJK No.10/POJK.05/2022, approval, as referred to in Article 47 paragraph (1), is approval from the user in writing or another form by applicable regulations. Meanwhile, written applications, as intended in Article 47 paragraph (5), are applications by letter, electronic mail (email), or other channels in the electronic system provided by the Organizer. In digital transactions between individuals and providers, the physical storage of privacy and personal data is difficult to find. The place where consumer data is stored can be broadened beyond the scope of national jurisdiction because it will be cross-border. The data can be accessed by someone from other countries, other⁵⁵ than the country that owns the data. Thus, the effectiveness of protecting consumer privacy and personal data must be supported by adequate regulations. The rules above include transferring consumer personal data, which must require special approval.

¹⁵ Heppy Purbasari and Dewita Puspawati, "Exploration Study of Sharia Corporate Exploration Study of Sharia Corporate Governance Disclosure on Bank Annual⁴⁶ Governance Disclosure on Bank Annual Report of Sharia Business⁴³ Unit Report of Sharia Business Unit," *Riset Akuntansi Dan Keuangan Indonesia* 6, no. 1 (2021): 50–61, <http://journals.ums.ac.id/index.php/reaksi/index>.

The principle of protecting the security of personal data needs to pay attention to the concept of privacy, which needs to be used to care for the unity of the individual. Privacy includes explaining the right to enjoy life. Even though privacy has received recognition as a Human Right (HAM), as a concept, it is complex to explain and has various types based on context, culture, or nation.¹⁶ Furthermore, in POJK, there is a principle of fair treatment. According to Rawls, justice includes two principles: firstly, freedom, which is as equal as possible, and secondly, the difference principle, which means that for society to be governed relatively, everyone doesn't need to get the same things.

³⁹ Then there are the LPBBTI consumer protection principles, namely the principles of handling complaints and resolving consumer disputes in a simple, fast, and affordable manner. In this case, any user who feels disadvantaged can take legal action through an institution tasked with resolving disputes between consumers and providers or through a judicial body. In the principles of complaint handling, there are elements such as the availability of complaint services for internal resolution, serious follow-up of complaints internally or by judicial institutions, developments in complaint handling, and understanding explanations of developments using technical language that is easy for consumers to understand. Based on the first aspect of the LPBBTI consumer protection principle, namely Transparency, based on interview data and norms referring to POJK No.10/POJK.05/2022, the principle of Transparency has been fulfilled.

Then, the LPBBTI consumer protection principle is the principle of fair treatment. The principle of fair treatment requires that parties, both recipients of funds and donors, be treated in a balanced and fair manner. In implementing fair treatment, the first principle is equal freedom wherever possible; para lender, in this case, has the same freedom in terms of options for choosing projects offered by the Organizer. In this case, the Organizer has also guaranteed that the project being offered has met the appropriate verification or risk mitigation process so that it is worthy of being selected and obtaining financing from the Organizer with funds from the funder.

Then, applying the second principle, namely the difference principle, means that for society to be regulated relatively, everyone doesn't need to get the same things. Paralenders have received consequences for the project bids they have funded. In this case, it means that the Organizer provides clear Information to the lender lenders Information on annual returns received by funders, minimum nominal funding, funding time tenor, attached report on the realization of fund distribution, report on the return of the principal financing, which varies according to the funding project offer that has been selected. Based on interview data and applicable norms referring to POJK No. 10/POJK.05/2022, the parties have fulfilled and implemented the principle of fair treatment. The second principle of LPBBTI consumer protection is reliability. The principle of reliability is a characteristic of being trustworthy or tested, meaning that reliability states something that is trustworthy or has conditions that have been tested. In this case, what is meant by being reliable and having

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¹⁶ Fitriyana Agustin, Ridan Muhtadi, and Sakinah Sahal, "The Importance of Implementing Environment, Social and Government (ESG) and Maqasid Shariah Based Islamic Finance in Islamic Bank," *JISEL Journal of Islamic Economic Laws* VI 6, no. 2 (2023): 2023, <https://journals.ums.ac.id/index.php/jisel/index>.

proven capacity is the Organizer carrying out funding between both parties, namely the fund provider and the recipient.

According to the lenders, data confidentiality and security have been fulfilled for a single individual because new data and funding can be processed when lenders give written consent either in the form of a choice or consent option on the application. Apart from that, the written procedures regarding procedures for written approval with the two options above are adjusted to the provisions stated in the standard operating procedures, which are displayed before funding.

Then, the principle of consumer protection, namely the principle of handling complaints and resolving consumer disputes in a simple, fast, and affordable manner, is introduced. In this case, any user who feels disadvantaged can take legal action through an institution tasked with resolving disputes between consumers and providers or through a judicial body. In the principles of complaint handling, there are elements such as the availability of complaint services, serious follow-up of complaints, developments in complaint handling, and understanding explanations of developments using technical language that is easy for consumers to understand.

Based on interview data with POJK No.10/POJK.05/2022, the principle of handling complaints and resolving consumer disputes simply, quickly, and at an affordable cost is not optimal. This is based on Information where the organizers only provide consensus deliberation as a first step when there is a disagreement. If there is no middle ground, the parties resolve the dispute at the court office where the Organizer is domiciled. In this case, the Organizer did not explain the details of the complaint service, future complaint follow-up services, developments in handling, other law enforcement officials involved, the use of language that is difficult to understand for dispute resolution, and there is no extraordinary judicial institution for fintech disputes.¹⁷

Based on interview data and POJK No.10/POJK.05/2022, consumer protection tends not to be optimal because there are still obstacles as follows: 1) Obstacles from the law where written regulations that apply to regulate P2PL as a whole still need to be created. The new P2PL arrangements are technically regulated through POJK. According to observations and interviews with parties, the moment the lender has funded a project, the lender still needs to get the Identity and legality of the company receiving the funds that have been financed, though the lender has that right. This is a detrimental lender, cause lender. He has already placed funds in a project where he still needs to learn the Identity of the recipient of the funds. These legal obstacles cause consumer protection, namely reliability, not to be optimal; 2) Obstacles from law enforcers involved in law enforcement, where user protection only focuses on the organizers. To provide maximum protection to all users, it is necessary to collaborate with law enforcement officials such as the Police, Prosecutors, and Advocates, along with Non-Governmental Organizations (NGOs) or Consumer Protection Institutions. With this, if there are obstacles to carrying out protection

¹⁷ Shila Nini, "Law Without Lawyers: Examining the Limitations of Consumer-Centric Legal Tech Services," *Journal of Intellectual Property and Information Technology Law (JIPIT)* 3, no. 1 (2023): 15–76. <https://doi.org/10.52907/jipit.v3i1.223>.

and preventive efforts, then repressive efforts can be carried out maximally to protect the lender's rights. These obstacles from law enforcement mean that the principle of handling complaints and resolving consumer disputes simply, quickly, and at an affordable cost is not optimal; 3) Barriers to facilities/facilities that support law enforcement, such as adequate equipment. In this case, the OJK, as the supervisor in financial services, still needs to have sufficient tools, such as artificial intelligence support, to monitor its customers' transaction process and funds. Lender. However, the facilities/facilities of the organizers support the principle of Transparency; 4) Obstacles from society, where people still lack financial literacy and legal literacy, so when choosing a sharia P2PL provider, people have difficulty distinguishing between licensed fintech and illegal fintech. This weakens public security protection if they mistakenly select to fund illegal fintech. However, in terms of community factors, some people understand the consequences of funding from the organizers, thus supporting the principle of fair treatment; 5) Cultural barriers: lenders still need to be more proactive and ignore the terms of reference or conditions set by the organizers. Lenders are also those who could be more proactive in making complaints about the shortcomings of Sharia P2PL fintech services. However, some cultures in the middle tier have supported confidentiality and security/consumer information data and, for some reason, have understood digital-based financial services.¹⁸ By the amendment of provision on P2PL in which are the basis for the principles that must be adhered to in implementing P2PL sharia in POJK 10/2022, it increases protection for lenders.

3.2 Offer to Improve Legal Protection based on POJK Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services

The digital era is characterized by the emergence of new methods for utilizing technological developments.¹⁹ Fintech is a startup centered on companies that innovate in financial services with technology.²⁰ With its development, there are many investors, both of whom are looking at companies as a place to invest. There is an increase in cashless due to the presence of fintech institutions. The presence of various financial technologies produces new markets and enables the creation of new forms of information technology-based services. Based on data released by the OJK, as of January 2023, 102 fintech lending companies were registered and obtaining business licenses from the OJK. Fintech is an alternative investment platform that offers funding, known as peer-to-peer lending, which refers to providing financial services to directly connect funding providers with funding recipients via electronic systems and internet networks to make agreements in rupiah currency.

¹⁸ Alvian Dwiangga Wijaya and Teddy Prima Anggriawan, "Perlindungan Hukum Terhadap Data Pribadi dalam Penggunaan Aplikasi Di Smartphone," *Inicio Legis* 3, no. 1 (2022): 63–72, <https://doi.org/10.21107/il.v3i1.14873>.

¹⁹ Ayman Abdalmajeed Alsmadi et al., "Banking Services Transformation and Financial Technology Role," *International Sciences Letters* 12, no. 1 (January 1, 2023): 315–24, <https://doi.org/10.18576/isl/120126>.

²⁰ Peter Gomber et al., "On the Fintech Evolution: Interpreting the Forces of Innovation, Disruption, and Transformation in Financial Services," *Journal of Management Information Systems* 35, no. 1 (2018): 220–65, <https://doi.org/10.1080/07421222.2018.1440766>.

Regarding providing legal protection for the funds-owned lender, it would be better to protect refunds through credit insurance, a form of liability from the insurance company to creditors or lenders. The creditor is responsible if the debtor cannot pay off the financing. Credit insurance should receive special attention to protect assets from lenders in the future. This protection can guarantee the risk of payment failure, which could impact the lender. Insurance services will have value in protecting funds and lenders.

The implementation of credit insurance can refer to Minister of Finance Regulation Number 124/PMK.010/2008 concerning the Implementation of Credit Insurance and Suretyship Business Lines (from now on referred to as PMK No.124/PMK.010/2008). Credit insurance can protect creditors if the debtor cannot repay the financing under certain conditions. With the availability of credit insurance services for each project grade offered by P2PL providers, credit insurance services can provide relief in repayment of financing by debtors to creditors.²¹

Sharia P2PL providers need to partner with productive insurance services aimed at business entities, corporate segments, or Small and Medium Enterprises (SMEs). This service provides projections if the company's debtor fails to pay off the financing due to the business owned by the recipient of the funding failing or bankrupt. An example of productive insurance is micro-credit insurance for small and medium enterprises and investments.

It is hoped that productive or trade credit insurance will protect entrepreneurs so that the businesses or SMEs they run can continue to run smoothly. Companies that provide credit insurance products for corporations include Asuransi Sinar Mas (ASM), Askrindo, and Asei. With organizers who partner with insurance companies, in general, consumers can make insurance claims by submitting a claim, investigating the claim, checking proof of loss, and paying.

Protection against refunds is still not guaranteed based on POJK regulation No.10/POJK.05/2022. Sharia P2PL organizers or government authorities have not given special attention to refund protection, so there are still gaps that could harm the rights of funders (funder) as the owners of the funds.²² To prevent loopholes in terms of refunds, it is necessary to offer a concept of protection against refunds. To guarantee the return of funds, the Organizer enters into a fiduciary agreement, where the object of the guarantee is an immovable or movable item, having a form or not having a form. If a fiduciary is available, then some benefits can be handed over because property rights will be handed over to the donor, even though the object is still in the control of the recipient of the funds.

The advantage is that funders do not need to provide a special place to store fiduciary collateral, such as a pawnshop, because the agreement is an accessory. This means that the fiduciary agreement is born and cannot be separated from the credit agreement. This means

²¹ Ryan Randy Suryono, Indra Budi, and Betty Purwandari, "Detection of Fintech P2P Lending Issues in Indonesia," *Heliyon* 7, no. 4 (2021): e06782. <https://doi.org/10.1016/j.heliyon.2021.e06782>.

²² Devi Siti Hamzah Marpaung, "Legal Protection of Peer to Peer Lending Loans in Standstill Agreements Based on Legal Assurance Theory," *Lambung Mangkurat Law Journal* 7, no. 2 (2022): 175–83. <https://doi.org/10.32801/lamlaj.v7i2.350>.

explaining that a ³² fiduciary guarantee agreement cannot exist without being preceded by another agreement, which is called the main agreement.²³

⁵ Fiduciary is the transfer of ownership rights to an object based on trust, provided that the object based on trust and the object whose ownership rights are transferred remain in control of the object's owner. The definition of transfer of ownership rights is the transfer of ownership rights from the fiduciary giver to the fiduciary recipient under trust, meaning the condition that ⁷ the object that is the object remains in the hands of the fiduciary giver. A fiduciary transfers property rights from the debtor based on the principal agreement to the creditor. Still, only the ⁶⁷ rights are transferred by juridical levering and are only owned by the creditor ³ in trust, and the goods remain controlled by ³⁶ the debtor.

This has been regulated in Article 1 point 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees (from now ⁶³ referred to as Law No. 42/1999). In fiduciary guarantees, we can ⁷ anticipate that if the debtor or fiduciary giver (recipient of funds) commits a default or breach of contract, the execution of the object that is the object of the fiduciary guarantee can be carried out by executory execution by the fiduciary recipient (funder or lender).

This has been regulated in Article 29 of Law No.42/1999. ⁵⁶ The fiduciary guarantee itself can only be present when the registration office ⁶⁰ records it in the fiduciary register book on the same date as the registration receipt date. Objects encumbered as fiduciary collateral ⁶ must be registered first. In fiduciary guarantees, the latest limit for registration with the fiduciary registration office is no later than 30 calendar days from the date of the consumer financing agreement.²⁴ If the company financing does not carry out fiduciary registration, then the Withdrawal of collateral cannot be justified. Registering a fiduciary agreement generally needs to be signed by the financial institution and the consumer under the hand, but financial institutions do not register the imposition of the guarantee.²⁵

With the presence of a fiduciary agreement, if the fiduciary provider (recipient of funds) ⁵ defaults on the funding agreement with the Organizer, then the Organizer can take ⁶ payment from the proceeds from the sale of the fiduciary collateral. When there is a ²⁶ default, the creditor (funder) can ask for compensation by executing the fiduciary ² guarantee. With fiduciary registration, the execution of collateral can be carried out without waiting for a court decision. This condition will make it easier for financial institutions to withdraw ²² compensation from payments made to recipients of funds. However, in its execution, the encumbrance of objects with fiduciary guarantees must be made using a notarial deed and is known as a Fiduciary Guarantee Deed, which contains the following: a) Identity of the giving and receiving parties; b) Fiduciary guaranteed

⁶⁹ Nizar Apriansyah, "Keabsahan Serah terima Jaminan Fidusia Yang Didaftarkan Secara Elektronik," *JIKH* 12, no. 3 (2018): 227–42, <https://doi.org/10.30641/kebijakan.2018.V12.227-241> Abstrak.

²⁴ T. Muhammad Ali Bahar et al., "Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice," *Lex Scientia Law Review* 7, no. 1 (2023): 215–48, <https://doi.org/10.15294/lesrev.v7i1.69318>.

²⁵ Suwinto Johan, "Implementation Fiduciary Registration According to Finance Ministry, Police, and Financial Services Authority (OJK)," *The Winners* 22, no. 2 (2021): 183–89, <https://doi.org/10.21512/tw.v22i2.7064>.

2 principal agreement data; c) Description of the objects that are the object of fiduciary collateral; d) Guarantee value³⁷ and value of objects that are the object of fiduciary collateral; e) The guarantee value and the value of the object that is the object of the fiduciary guarantee.

A fiduciary agreement³ provides a fiduciary guarantee when the master agreement experiences problems. The purpose of the fiduciary agreement is to give legal protection to the creditors themselves. A fiduciary guarantee provides written evidence regarding the creditor's existence so that they can sue legally by providing proof of the delivery of the guarantee offered by the debtor.

However, it will be different if the debtor (recipient of funds) pays off the financing on time. The creditor (provider of funds) will later return the ownership rights to the fiduciary or debtor. However, if the fiduciary giver cannot pay off the financing, the fiduciary recipient has the right to sell the fiduciary goods to pay off the funding. In fiduciaries, there are several aspects to pay attention to, as follows: a) The existence of collateral rights; b) The existence of objects, namely movable, tangible, intangible, and immovable objects, especially buildings that are not burdened with mortgage rights; c) The object of collateral remains in the fiduciary's control and is given priority to the creditor.²⁶

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In practice, fiduciary guarantees will provide legal protection to creditors. Cases of fiduciary guarantees on fiduciary collateral will provide some clarity regarding legal protection for creditors (fund givers) or debtors (fund recipients).²⁸ Fiduciary collateral for the debtor's property must be handed over to the financial institution as the creditor. In practice, fiduciary guarantees are accessor, which means that the fiduciary transfer of property rights has no characteristics stand-alone, which results in the birth and termination of the fiduciary guarantee, which does not depend on the main agreement, so to end the fiduciary guarantee, there must be a statement of handover of property rights as a fiduciary guarantee as a form of ending the fiduciary guarantee.²⁹

Overall, Fiduciary Guarantee can provide legal protection to creditors (fund providers) by referring to Law No. 42/1999, the details of which are as follows: 1) The existence of a fiduciary registration institution, which does nothing but guarantee the interests of the party receiving the fiduciary; 2) There is a prohibition on the fiduciary giving the fiduciary object again; 3) There is a provision that the fiduciary is not permitted

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²⁶ Agnes Maria Janni Widyawati, "Importance of Fiduciary Guarantee Registration for Parties Based on Law 42 of 1999 on Fiduciary Guarantee" 140, no. 42 (2020): 16–19, <https://doi.org/10.2991/aebmr.k.200513.004>.

²⁷ M. Jamil, "Fiduciary Security Arrangements and Issues in Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 2 (2021): 109–19, <https://doi.org/10.53955/jhcls.v1i2.1>.

²⁸ Nurliristiwa, Busyra Azheri, and Syahril Razak, "Binding of Third Party Guarantee Objects in Financing Agreement in PT Multindo Auto Finance in Padang City," *International Journal of Multicultural and Multireligious Understanding* 7, no. 4 (2020): 444–56, <http://dx.doi.org/10.18415/ijmmu.v7i4.1653>.

²⁹ Nadila Miftahul Jannah and Sri Maharani Mardianingrum T. V. M., "Implementation of Legal Protection for Creditors for Defaulting Customers with Motorized Vehicle Ownership Book Guarantees," *Widya nata Hukum: Jurnal Kajian Dan Penelitian Hukum* 5, no. 2 (2023): 127–41, <https://doi.org/10.37631/widyapranata.v5i2.783>.

to transfer, mortgage or lease; 4) There is a provision that the fiduciary must hand over ⁸ the collateral object if the debtor wishes to execute the fiduciary collateral object; 5) There are criminal provisions in Law No.42/1999.

However, fiduciary still has the potential to experience obstacles in efforts to complete the implementation of credit agreements with fiduciary guarantees according to Setyawati. The main obstacle to implementing credit agreements with fiduciary guarantees occurs when there is a default on the part of the debtor due to the following factors: 1) The debtor's business fails; 2) The credit distributed is not used correctly (not for the credit application) by the debtor; 3) The debtor is not in good faith in fulfilling his obligations; 4) National economic conditions, which also influence the debtor's financial condition; 5) Other things that are beyond predictions.³⁰

In implementing the fiduciary, the Organizer needs to collaborate with a Notary who will independently process electronic registration of fiduciary guarantees electronically, which is now present to balance the increasing number of fiduciary registration requests, as well as cut the registration time to a short time, to minimize undesirable things such as the existence of illegal levies. The insurance policy for financing disbursed by lenders provides protection if there is an inability to pay from borrowers. Apart from that, the obligation to use fiduciary guarantees for financing distribution can also increase the sense of security for lenders. If there is a problem with financing, the guarantee will be confiscated. Even though the two concept offers offered are considered to be able to further increase protection for lenders, their realization requires hard work to make it happen. Apart from that, the concept that fintech is without collateral has become an outdated concept because of the new concept that for the security of lenders' funds there needs to be collateral.

4. CONCLUSION

There ⁴⁷ still no written regulation specifically for Sharia fintech as a whole, only the Technical Regulation of the Financial Services Authority, namely POJK No. 10/POJK.05/2022. For the law enforcement factor, it is currently not achieved because the organizers do not cooperate with other law enforcers such as the Police, Prosecutors, Advocates, NGOs, or Consumer Protection Institutions in order to carry out repressive legal efforts if needed. Regarding the offer of the concept of improvement of protection in ⁴ POJK No.10/POJK.05/2022, especially in the principle of reliability and the principle of handling complaints and resolving them simply, quickly, and at affordable costs is needed because there are still delays in payment. Liability is given to the lender if the beneficiary is unable to repay the financing. Credit insurance should receive special attention from the organizers to protect lender assets. Secondly, for improvement, there is a need for Fiduciary Guarantee. If a fiduciary is available, there is a benefit that can be given because the property rights will be handed over to the lender, even though the object is still in the

³⁰ Sazili Sazili et al., "Analysis of Fiduciary Guarantee Arrangements and Legal Protection of Creditors in Fiduciary Agreements in Indonesia," *International Journal of Social Science Research and Review* 5, no. 1 (2023): 159–65, <https://doi.org/http://dx.doi.org/10.47814/ijssrr.v6i8.1442>.

possession of the beneficiary. Third, Sharia P2PL fintech organizers need to coordinate actively with law enforcement officials such as prosecutors, advocates, NGOs, or consumer protection agencies to work together to protect the rights of lenders involved in funding with preventive or repressive legal efforts in the event of late payment or default.

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