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Evaluating the Effectiveness of Fintech Lending Regulations in Indonesia: Identifying Issues for Future Improvement

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Abstract

This study aims to evaluate the effectiveness of fintech lending regulations in Indonesia, identify existing issues, and contribute recommendations for future improvements. The study used a qualitative approach that focused on process and meaning by using statutory and conceptual approaches from a normative juridical perspective. Data were collected through document or literature studies, complemented by primary data sources, and analyzed qualitatively using a descriptive-analytic method. The study found that although various efforts have been made to regulate fintech lending in Indonesia, significant issues still need to be addressed. The prevalence of illegal fintech loans and a lack of consumer protection are two major concerns that need urgent attention. The study suggests that regulators must take firm and decisive action to curb the growth of illegal fintech lending and improve consumer protection by imposing strict sanctions and strengthening regulations. By taking these steps, Indonesia can create a more favorable environment for fintech lending, promote financial inclusion, and protect consumers' interests. This can assist in ensuring that the regulatory framework keeps up with the rapidly evolving fintech industry while protecting the interests of all stakeholders.

Keywords: Effectiveness; Fintech Lending; Regulation; Legal Certainty; Consumer Protection.

Introduction

Financial technology lending (fintech lending) refers to using technology to provide financial services to consumers and businesses, including loans. In this financial service, lenders and borrowers conduct transactions directly without the intermediary of traditional financial institutions (Oh & Rosenkranz, 2020). Fintech lending has gained popularity as an alternative source of funding for micro, small, and medium enterprises in addition to financing sourced from banking institutions during the financial crisis in 2008 when capital owners were actively looking for investments that provided high returns because banks only give interest rates close to 0% (Hartanto & Ramli, 2018).

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As a result, fintech lending services continue to expand and develop evenly around the world. Experts predict that the fintech lending industry will grow significantly, with a transaction value of USD 312.6 billion in 2020. LearnBonds.com data indicates that the alternative loans sector has been expanding at an annual rate of 17%. This growth trend is evidenced by companies such as Lending Club in the US and Funding Circle in the UK, and it is expected to persist, resulting in a market valuation of USD 390.5 billion by 2023 (Paypers.com, 2020).

In Indonesia, fintech lending is growing and developing well, even though the number of organizers goes up and down. According to information released by Financial Services Authority (OJK) on October 25, 2021, 104 fintech lending companies are officially registered and have operational licenses from OJK. This number decreased from the data released at the beginning of 2021, which was 149 companies. The decline was caused by the revocation of registration letters in OJK for 45 fintech lending companies (Hafidz Amrullah & Sri Imaniyati, 2018). As of January 5, 2023, the total number of fintech lending providers licensed with the OJK is 102 companies (Financial Services Authority, 2023). According to research carried out by the Institute for Development of Economics and Finance (Indef), fintech lending has made a significant contribution of IDR 60 trillion to the national economy, creating employment opportunities for approximately 362,000 individuals directly and indirectly. Additionally, it has positively impacted poverty reduction by approximately 177,000 people (Indef, 2019). A 1% increase in fintech loans results in a 0.653% increase in gross regional domestic product, a 1.163% decrease in the unemployment rate, and a 0.0215 decrease in the level of inequality (Wahyono, Sihombing, & Muchtar, 2022).

However, fintech lending poses a high risk to both lenders and borrowers. Lenders face various risks when lending money to borrowers. These risks include the risk of idle money due to the waiting period for the loan to be fulfilled, the risk of not being able to withdraw investment during the waiting period, the risk of late payment by the borrower, and the risk of default when the borrower is unable to repay the loan, although in some cases, the platform imposes penalties on borrowers who are late in making payments (Tampubolon, 2019). Loan recipients also face considerable risks, such as high-interest rates and inadequate consumer protection (Noor et al., 2021). The benchmark interest rate is left to the Indonesian Fintech Funding Association (AFPI), which stipulates that the interest rate that association members can charge their borrowers is 0.8%–4% per day for a loan period of 30 days (Moertanto & Latumahina, 2023). The OJK, which functions as a regulator and supervisor of financial institutions, has issued several regulations to manage risks associated with fintech lending services. These regulations aim to mitigate potential risks and include OJK Regulation (POJK) 13/POJK.02/2018 for digital financial innovation, POJK 6/POJK.07/2022 for consumer and community protection in the financial services sector, and

POJK 10/POJK.05/2022, which specifically governs information technology-based joint funding services (Noor & Maskur, 2022).

To ensure that regulations are achieving their intended goals and to identify areas that may require improvement, it is crucial to evaluate their effectiveness. Effectiveness is a postulate of legal positivism and a condition of legal validity (Kelsen, 1966). Regulatory effectiveness refers to the ability of individuals to adhere to legal norms, ensuring that rules are enforced and obeyed. Several factors influence the effectiveness of regulation within the broader legal framework. These include the legal system itself as a means of achieving justice, legal certainty, and benefits, the actors responsible for enforcing violations of the law, the facilities and resources available to support enforcement, and the community's awareness of legal issues (Orlando, 2022). This theory is consistent with Lawrence M. Friedman's theory of the elements of legal systems, arguing that every legal system requires legal substance, legal structure, and legal culture (Friedman, 1979). These factors serve as critical metrics for evaluating the efficacy of regulations.

Regulatory evaluation is one of the essential steps in the process of effective legislation management, which involves six stages: planning, preparation, discussion, approval or determination, enactment, and evaluation (Taufik & Dewi, 2020). Evaluation is necessary to assess, monitor, and analyze whether a regulation has successfully achieved its objectives and provided benefits to the community, nation, or state. The findings of the evaluation can then be used as valuable data to plan and create the next regulation. In summary, by conducting effective regulatory evaluations, we can ensure that regulations fulfill their intended purpose and contribute to society's greater good (Taufik, 2017). It is an important step in the cycle of good legislation management and allows for continuous improvement in creating and implementing effective regulations.

This assessment of fintech lending regulations will entail a depth analysis of the current regulatory framework, including evaluating its impact on fintech lending activities and the broader market. Furthermore, any gaps or shortcomings in the existing regulations will be identified and addressed. By pinpointing these issues and exploring potential solutions, the evaluation can enhance the overall efficacy of Indonesia's fintech lending regulations. It will also ensure that these regulations offer sufficient protection for consumers and businesses and encourage the growth of the fintech industry in Indonesia. This balance is crucial as it will enable the advancement of information technology-based financial innovation while maintaining appropriate regulation levels.

Research Method

This study is qualitative legal research that prioritizes the process and meaning/perception, aiming to uncover various qualitative information through meticulous and meaningful descriptive analysis, without disregarding quantitative information in the form of numbers or amounts (Batubara, 2017). Based on the research focus, this study is empirical normative juridical research. Normative juridical research serves to provide juridical argumentation in cases of normative gaps, ambiguity, or conflicts (Rahayu, 2019). From a normative juridical perspective, this study utilizes both the statute approach and conceptual approach. The data sources used include both secondary and primary data to complement and clarify the secondary data. Data collection is carried out through a document or literature study (Noor, 2023). The data gathered for this study includes primary and secondary legal materials, as well as tertiary legal materials. To analyze this data, relevant materials will be selected and organized, patterns will be identified, and the materials will be synthesized. The analysis will be conducted using a qualitative approach and a descriptive-analytical method, with a focus on secondary data.

Results and Discussion

Fintech Lending Policies and Regulations in Indonesia

Fintech lending services are not subject to specific laws under formal legal regulations, but they are categorized as *nominaat* agreements falling under Book III of the Civil Code because they involve loan and borrowing agreements. As per Article 1754 of the Civil Code, these agreements involve one party providing a positive consumable item to another party, with the condition that the borrower will return the same amount in the same kind and condition. Consequently, fintech lending services are implicitly regulated by the Civil Code, specifically about the validity of agreements, particularly those based on information technology co-financing. According to Article 1320 of the Civil Code, agreements are valid if they have been agreed upon by the parties if there is a legal reason for a certain issue and the parties can agree since fintech lending services meet these requirements, contracts between lenders and fintech service providers, as well as between lenders and borrowers, are considered valid contracts.

Fintech lending services is regulated not only by the Civil Code but also by the Electronic Information and Transactions Law No. 11 of 2008, which was last amended by Law No. 19 of 2016. According to Article 1 of this law, electronic transactions of legal acts are performed through media including computers and computer networks. As fintech lending services fall under electronic transactions, parties are expected to act in good faith during interactions or information exchanges. Fintech lending services typically utilize standardized contracts or electronic agreements that the service provider provides, which borrowers and lenders can accept or reject by clicking an acceptance button or filling out the agreement form. Article 49(3) of Government Regulation No.

71 of 2019 concerning the Implementation of Electronic Systems and Transactions states that consent in electronic transactions can be demonstrated through acceptance actions or the use of electronic system services, implying that using a fintech lending service provider's platform constitutes giving consent to the electronic contract.

Although the aforementioned laws do not specifically address fintech lending, the Financial Services Authority has introduced a new regulation, POJK 10/POJK.05/2022, by Law No. 21 of 2011. This regulation supersedes POJK 77/POJK.01/2016 and provides comprehensive guidelines for fintech lending service providers, including legal structure, ownership and capital requirements, business activities, loan limits, licensing requirements, platform manager qualifications, and agreements between parties. POJK 10/2022 also covers risk mitigation, information technology system governance, user education and protection, and sanctions for providers who violate the regulation. The purpose of these regulations is to establish clear and comprehensive guidelines for the fintech lending sector, promote responsible and sustainable business practices and protect the interests of service users. As a result, the regulation is expected to promote the growth and development of Indonesia's fintech lending industry while ensuring that it operates safely and transparently.

The Effectiveness of Fintech Lending Regulations in Indonesia

Laws and regulations exist to achieve important goals like justice, legal certainty, and benefits for society (Alexy, 2021). Legal justice involves philosophical aspects like norms, values, morals, and ethics. The law must provide benefits that are helpful to society, and legal regulations must be created by authorized institutions with strict sanctions and approval from the state to ensure legal certainty.

Legal certainty is one of the objects of the law, which is to provide the community with legal protection (Kharisma, 2021). In Indonesia, legal protection is a fundamental principle, particularly in welfare states. Protecting the rights of the people is necessary to uphold the basic principles of the welfare state. The fourth preamble of the 1945 Constitution of the Republic of Indonesia testifies to Indonesia's aspiration to become a welfare state. The government's goal to protect the Indonesian nation, promote public welfare, and foster independence, lasting peace, and social justice are emphasized in this paragraph. Hence, it is clear that Indonesia is a welfare state.

The concept of the welfare state was first put forward by Jeremy Bentham (1748–1832), who argued that government should provide the greatest happiness for as many citizens as possible (Riewanto, 2018). This concept is known as the theory of utilitarianism or legal utilitarianism and is considered the foundation of the welfare state. This theory argues that a country's laws and policies

should aim to increase happiness and reduce suffering in society. In this context, POJK 77/2016, which was replaced by POJK 10/2022, regulates the implementation of fintech lending to create legal certainty, justice, and benefits for service users as consumers. The establishment of this regulation is to ensure the protection of service users' rights and provide significant benefits to society as a whole, in line with the concept of the welfare state proposed by Jeremy Bentham (Bergsmo & Buis, 2018).

Despite the efforts to regulate fintech lending services and provide legal protection to service users, particularly borrowers, the reality protection is still far from optimal. This is evidenced by the number of reported violations such as privacy leaks, harassment, and other criminal activities. According to the Financial Services Authority, 19,711 complaints related to fintech loan services were received from 2019 to 2021. Of these, 10,441 complaints (52.79%) were categorized as minor or moderate violations, while 9,270 complaints (47.03%) were considered serious violations (Al Habsyi, Alfandy, & Laksana Mahdi, 2022). These violations include unauthorized disbursements, threats of sharing personal data, collection through intimidation or terror, and even sexual harassment. In addition, data from the Indonesian Police Criminal Investigation Agency and 17 regional police forces revealed that between January and November 2021, there were 375 cases related to illegal fintech lending service providers (Nurhidayat, 2021). In addition, borrowers also have to bear a high-interest burden. For loans with a 7-day term, for example, the interest burden that must be borne by borrowers can reach 7% per day (Aidha et al., 2019).

Violations and criminal acts and high-interest charges are often committed by fintech lending service providers who do not have a license from the OJK or illegal fintech lending. This poses a substantial assignment that desires to be addressed urgently. In fact, between September and December 2022, 273 instances of unlawful fintech lending were uncovered, and in January 2023, 50 extra instances have been identified (Wikanto, 2023). Therefore, regulators want to take sturdy and decisive movements to lower the increase of unlawful fintech lending and to make certain that purchasers are safely covered from predatory lending practices. This consists of improving public focus and schooling on the dangers related to unlawful fintech lending and imposing strict consequences on unlicensed fintech lending providers.

These cases illustrate the deviant behavior of fintech lending providers in providing services and not protecting the interests of their consumers. Such behavior is contrary to the human rights protected by Article 28D and Article 28G and the Preamble of the 1945 Constitution of the Republic of Indonesia, including the protection of consumers.

Issues in fintech regulations in Indonesia

POJK 10/2022 is a regulation that replaces POJK 77/2016 and provides legal certainty for fintech lenders. However, legal certainty is not just about having a legal framework but also its practical application and usefulness. The utilitarianism theory by Jeremy Bentham emphasizes the need to evaluate legal products based on their ability to benefit society (Endang Pratiwi, Theo Negoro, & Hassanain Haykal, 2022). Therefore, urgent to evaluate whether POJK 10/2022 has provided legal certainty, justice, and expediency. The evaluation should focus on whether the regulation has practical usefulness and benefits for the community, especially for vulnerable groups. If the regulation fails to provide maximum benefits, it should be replaced with more effective legal products that promote legal certainty and enable self-empowerment and dignity for vulnerable groups.

To achieve better outcomes, it is crucial to evaluate the efficacy of POJK 10/2022 as the legal basis for fintech lending activities in Indonesia. While POJK 10/2022 intends to regulate various aspects of fintech lending operations, there are still some shortcomings that need to be addressed. These deficiencies are apparent in the table presented below, indicating that further improvements are necessary to enhance the effectiveness of POJK 10/2022:

Table 1 Issues in POJK 10/2022 and Its Improvements

Issues on POJK 10/2022	Regulatory Improvements
Security Guarantee of Lender's Funds	Providers of fintech lending services are required to guarantee the safety of lender funds through credit insurance
Reference interest rate	The Financial Services Authority supervises or determines the reference interest rate
Education and literacy about fintech lending services	Providers of fintech lending are required to carry out education and literacy of their service products
The agreement between the service provider and the loan recipient is not regulated	The contractual relationship between fintech lending service providers and loan recipients
Providers of fintech lending services that have stopped their operations	Strict sanctions against fintech lending providers who fail to carry out their obligations
Illegal fintech lending providers are subject to administrative sanctions	Strict sanctions in the form of prison sentences and high fines

Source: Secondary Research Data, 2022

The table presented highlights various issues which are not covered by POJK 10/2022, specifically concerning the safety of lender funds and the legal relationship between borrowers and service providers. It is important to note that POJK 10/2022 does not regulate the guarantee of

lender funds, and as a result, funds lent to borrowers by lenders are not insured or protected. In the event of a payment default, the lender will not be compensated.

Additionally, POJK 10/2022 does not contain any regulatory guidance on legal relationships between fintech lenders and borrowers. Fintech lending providers only as credit intermediaries and is not responsible for the services. This differs from the definition of "services" in the Consumer Protection Act No. 8 of 1999. Services include any form of work or service offered to the public and used by consumers. Fintech lending service providers nevertheless receive payments or profits for the services they provide through their platforms. It is used to facilitate lending transactions between lenders and borrowers. Given the nature of their role, fintech lenders should be viewed as businesses. In addition to these issues, consumer protection, data protection, and transparency are also key areas for improvement.

Consumer Protection: POJK 10/2022 includes provisions on consumer protection, but there are still gaps in regulation. For example, it does not specify the types of fees that fintech lenders may charge borrowers. This may result in excessive fees and interest charges to the borrower, which in turn may affect the borrower's financial position.

Data Privacy: Fintech lenders collect large amounts of personal data from borrowers, including sensitive financial information. POJK 10/2022 requires fintech lenders to implement data protection measures but does not specify exact requirements. This can lead to issues related to privacy violations and identity theft.

Transparency: Regulations require fintech lenders to provide borrowers with clear and concise information about loan terms. However, lenders are not required to disclose their lending algorithms, which could pose a problem for borrowers unfamiliar with the fintech lending process.

To create legal certainty, justice, and expediency for the existence of POJK 10/2022, the Financial Services Authority needs to improve on these problems. Overall, while POJK 10/2022 provides a strong legal framework for fintech lending operations in Indonesia, there are still some areas that require improvement. By addressing these issues, the regulation can better protect consumers and promote responsible lending practices in the fintech industry.

Conclusion

Fintech lending regulations in Indonesia, as contained in laws and regulations, need to be evaluated to identify areas that need improvement. Despite efforts to govern various aspects of fintech lending, these regulations still fail to address several issues in these services. The prevalence of illegal fintech lending and a lack of consumer protection are two significant concerns that need urgent

attention. To address these challenges, regulators must take firm and decisive action to curb the growth of illegal fintech lending and improve consumer protection. This can be achieved by strengthening regulations and enforcing strict sanctions for non-compliance. By taking these steps, Indonesia can create a more favorable environment for fintech lending, promote financial inclusion, and protect consumers' interests.



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