**Analysis of Online Loan Financing and Consumer Risk Management with Fiduciary Guarantees as Legal Implications**

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**ABSTRACT:** *This study objectives to investigate the legal phenomena that occur in society as consumers of online loans in the financial technology industry. The normative juridical research method is used to study legal phenomena that occur in online loan financing companies and their consumers. The first finding reveals that legal regulations related to risk management for consumers aim at effective consumer protection and making appropriate online loan financing decisions. The current legal regulations are considered inadequate because they have not been able to provide legal clarity regarding the position of financial technology in the eyes of the law. The second finding reveals that the legal rules regarding fiduciary guarantees regulate fiduciary agreements involving collateral objects and provide legal certainty for lenders and borrowers. The shortcoming of the current rule of law is that the existence of guarantees does not cover the roles and responsibilities of the organizers in the event of a default. So that it can cause losses to the lender as the authorizer. It can be concluded that the legal regulations for online loans and consumer risk management are still weak. Implications for fiduciary guarantees need to be harmonized with fintech lending services to provide legal certainty and clarity.*

**Keywords:** *Online Loan Financing, Risk Management, Consumer Protection, Fiduciary Guarantees, Rule of Law.*

1. **INTRODUCTION**

Society is faced with many online lending services (Fintech peer-to-peer lending) in the financial technology industry. In recent decades, there have been more alternatives to online loan financing with some easy terms and opportunities for wider access to financial services. The various facilities for applying for financing offered by fintech lending make people interested in financing (Dewi & Kurniawan, 2022). Fintech lending is a new business model that continues to grow rapidly. But behind its success, the issue of legal certainty for fintech lending consumers has been in the spotlight for decades. This is because the high enthusiasm of the public as users of fintech lending is not properly accommodated by the law and can cause losses (Martinelli, 2021). Previous studies in the ASEAN region, especially Indonesia and Malaysia, found that special rules and supervision are urgently needed to avoid various chaos in the existing financial system. Weak jurisdiction can make consumers vulnerable to cyber attacks (Diniyya et al., 2021). In several cases, finance companies did not apply for the execution of collateral objects through the courts because of bureaucratic problems in their countries (Hakim et al., 2022).

In Indonesia, the Financial Services Authority (OJK) noted that until June 2022, the total number of fintech users reached 86.09 million accounts. This number consists of 85.19 million borrower accounts and 902.71 thousand lender accounts. OJK also noted that 102 fintech companies consisting of 95 conventional fintech and 7 sharia have succeeded in disbursing financing reaching IDR 20.67 trillion. This means that the development of fintech in Indonesia is quite significant. But unfortunately, this condition faces various challenges, especially in terms of regulation, licensing which is quite complicated, misuse of fintech lending for illegal purposes, and consumer disputes (Muryanto et al., 2022). In contrast, other findings reveal that a situation where consumers are faced with many new products can cause society as consumers to feel uncomfortable with these products. As a result, the effect of the risk of uncertainty on new products drives consumer behavior in making purchasing decisions (Koç et al., 2019).

Theoretically, consumers in making decisions are influenced by three desires that must be fulfilled, namely individualistic desires, collectivistic desires, and balancing desires. To fulfill the purpose of this desire, some rules or legal norms are formed by the state (Mertokusumo, 2010). The rule of law focuses on concrete behavior that prioritizes outward human relations. This means that human desire does not matter as long as it does not violate the law (Sidharta, 2008). In essence, the law aims to create an orderly, peaceful, and just society. So that people have legal certainty and are protected. Likewise, fintech lending regulations are important because they cover the fulfillment of consumer rights (Noor et al., 2021). Therefore, it is very important to understand aspects of the legal provisions regarding online loans and their scope that apply in Indonesia. Specifically regarding risk management for fintech users and fiduciary guarantees. The study explains that the principles of risk management with high security are needed by fintech users. Risk management for fintech users considers compliance and sustainability aspects that can minimize risk and support a sustainable business (Namchoochai et al., 2020). Fiduciary guarantees provide legal protection for creditors in the event of default. Without collateral, the risk of fintech lending will be much higher because there is no droit de suite principle (material rights that follow the owner) (Usanti et al., 2019). Of course, this cannot be separated from the form of legal responsibility of the government towards its people. Because the purpose of the law is not only about justice. But there must also be a balance between the demands of legal certainty and the demands of justice. As the purpose of law in Indonesia is stated in the Preamble to the Constitution in paragraph 4 concerning the purpose of the state protecting the Indonesian nation to promote public welfare, educate the nation's life, and carry out world order.

Weak legal protection for online loan consumers is a separate phenomenon for the people of Indonesia. The high public interest in online loans is inversely proportional to the risks that consumers have to face. The development of fintech lending is closely related to the negative stigma that comes from the results of public complaint reports received by the Legal Aid Institute (LBH). Among them is the problem of intimidating billing (Article 368 of the Criminal Code and Article 29 jo 45 of the ITE Law), violations of the dissemination of personal data (Article 32 in conjunction with Article 48 of the ITE Law), fraud (Article 378 of the Criminal Code) and sexual harassment through electronic media (Article 27 paragraph 1 jo 45 paragraph 1 UU ITE). A healthy legal framework will be able to prevent the abuse of fintech. Meanwhile, its limitations can lead to weak consumer protection efforts. In addition, legal provisions must be adapted to the needs of financial markets to prevent money laundering and fiscal fraud (Kharisma, 2021). Research conducted by Aulia et al., (2020) adds that OJK regulations do not sufficiently regulate fintech, but also the need for laws that have a higher position than OJK regulations. The Fintech Law is expected to provide legal certainty and specifically regulate the financial products and services offered by fintech. And this rule is also about an early warning system to improve the monitoring of online loan performance.

Previous studies investigated various legal cases that occurred in fintech companies using normative legal research methods, qualitative methods, and quantitative methods. Some of these studies focused on investigating the importance of uniform fintech risk management tools to reduce regulatory barriers and improve sustainable quality (Jain et al., 2023; Disemadi et al., 2020; Namchoochai et al., 2020; Giudici, 2018); risk management within a law enforcement framework for consumer security and privacy as well as filling gaps in traditional payment systems (Uña et al., 2023; Hussain et al., 2021; Keong et al., 2020); legal risk has a negative influence and convenience has a positive influence on consumer decisions (Ryu, 2018). Previous studies investigated consumer behavior toward fintech services using quantitative methods with the Structural Equation Model (SEM) and Technique for Order of Preference by Similarity to Ideal Solution (TOPSIS) used by fintech. These findings found that the risk management factor is a factor that is rarely considered compared to the usability factor of fintech and its convenience factor. Risk management factors for consumers influence their trust in fintech services (Fernando et al., 2019). However, there are very few legal studies on fintech lending consumer risk management to obtain legal protection through the implications of fiduciary guarantees. Interestingly, intellectual property (licenses, technology transfer, trademarks, and franchises) can be used as objects of fiduciary guarantees to financial institutions to reduce risks that may arise in loan financing agreements (Saragih & Widiarty, 2022).

The literature states that fiduciary agreements entered into by fintech companies and their consumers are the same as the fiduciary guarantee process for conventional finance companies. The contents of the agreement are in the form of a principal agreement and fiduciary binding as an access agreement. The risks posed are fraud, data security, and market uncertainty (Laksana et al., 2020). The importance of smart consumer protection for negative risks requires that consumers choose the right risk mitigation through fiduciary guarantees as legal guarantees for parties involved in online loan agreements. Trust, security protection, and the cognitive perspectives of consumers influence their decisions in financing online loans. However, the quality of information and security privacy does not significantly influence consumers to use fintech services (Rani, 2021; Maureen Nelloh et al., 2019). Recent studies reveal that a common approach places financial inclusion policies and strategies above consumer protection regulations. The dangers of digital finance have required the importance of digital regulations and smart consumer protection regulations (Dewi, 2022).

Research that examines the rule of law for fintech lending users has not been extensively studied by previous researchers. Based on these previous studies, the novelty of this research is shown by the existence of an empirical legal analysis regarding fintech lending and consumer risk management which has implications for fiduciary guarantees. Previous findings reveal that it is very important that recent studies investigate regulations that can protect consumers in the financial industry. This is because strong regulations provide rules regarding consumer handling procedures and standard operating procedures. To minimize the long-term negative impact of having an online loan financing agreement (Johan & Ariawan, 2021). Therefore, this study investigates the legal rules regarding online loan financing and consumer risk management and their implications for fiduciary guarantees using empirical legal research methods).

**Research Questions**

This research has a background problem as explained that the growth in the distribution of online loan financing or fintech peer-to-peer lending is still low below 2% (month-on-month/mom) in 2022. In addition, weak consumer protection makes legal understanding of fintech lending, risk management, and fiduciary guarantees indispensable in Indonesia. Based on the background of the problems presented, this study focused on two problem formulations as follows;

1. What are the legal arrangements regarding risk management for consumers who use online loan financing in Indonesia?
2. What are the legal arrangements regarding online loan financing and their implications for fiduciary guarantees?

**Literature Review**

**Online Loans and Fiduciary Guarantees in the Financial Technology Industry**

Online lending is a type of business carried out in the financial technology (Fintech) industry, also known as fintech lending/peer-to-peer lending. Fintech has three stakeholders consisting of consumers, market players, and regulations which can be viewed from three themes (financial industry, technological innovation, and law) (Sangwan et al., 2020). Online loan products can widen the lack of access to finance for consumers who do not obtain loans from banking providers. This product offers some advantages due to its automation, consumer-friendliness, and time efficiency (Anshari et al., 2020). Online loans are money loan facilities provided by financial service providers that are integrated with information technology. The stages start from the submission process, obtaining loan approval, and disbursing funds which are carried out online. The provision of these loans has increased the interaction between consumers and lenders in cyberspace. But not for developed countries like the United States. Fintech lending only makes a small contribution to total credit compared to conventional financial institutions. Going deeper, the findings reveal that factors of increasing convenience and speed of service become more important than increasing supervision (Berg et al., 2022). Fintech lending has an important role in creating the financial landscape. But unfortunately, users can accept greater risks than traditional borrowers. In addition, interest rates and loan performance are alternative sources of information that are highly correlated with borrowers' decisions to choose between fintech lending and banking. In this case, the loan rating can be considered better if the loan offered is lower. Because with lower loans, the risk of default is also lower (Jagtiani & Lemieux, 2017).

Fiduciary is the taking of rights based on trust (fiduciary eigenforms overdarcht lexes). Fiduciary guarantees in the fintech industry relate to legal guarantees for the repayment of loans made by consumers. This guarantee allows the fintech industry to mitigate the risk of possible losses in online loan financing agreements. In Indonesia, fintech lending is based on crowdfunding where only agents are allowed and creditors are not allowed. In contrast to banks, which can submit fiduciary guarantees and register them to obtain legality. Many fintech lending companies are found without fiduciary guarantees where the lending process is carried out online (Nugraheni & Aziza, 2020). Without an object of collateral, the risk of fintech lending becomes much higher in the event of a default. The risk of default will increase because there is no significant guarantee (Usanti et al., 2019). According to Laksana et al. (2020), online fiduciary agreements in fintech lending agreements are the same as the fiduciary guarantee process at other financial institutions. To minimize fintech lending financing without fiduciary guarantees, it is better if loans are offered to consumers in the short and medium term for smaller risks for both parties.

**Consumer Behavior and Risk Assessment**

According to Venkatesan (1981), the introduction of products generally cannot indicate a danger before the product is marketed. This is the reason for the importance of post-marketing control to be used as an evaluation of product risk. Consumers rely heavily on inferences drawn from the information they remember, hear, and observe. So it can affect the perception of risk and the level of risk that can be accepted for a product/service. Many consumers face risks associated with products managed by professionals. So that consumers do not feel worried about the negative risks that might occur in the future. The reason is that ordinary people seem to believe that technological progress can solve the problem of hazards. A company's brand can influence consumer behavior. In making decisions to buy or use certain goods or services, it depends on their age (Chovanová et al., 2015). The findings reveal that based on social cognitive theory in understanding consumer behavior in database information practices it is found that such behavior is influenced by i-safety. Privacy warnings and privacy seals influence risk assessment and consumer behavior as a form of protection for personal data (LaRose & Rifon, 2007). The development of fintech has changed consumer behavior which tends to switch to technology-based financial services. To gain consumer loyalty, financial and non-financial institutions are required to be customer-centered by carrying out financial innovations and controlling risks to adapt to fintech developments (Romanova & Kudinska, 2016).

1. **METHOD**

**Design**

This study aims to investigate online loan financing using financial technology services and risk management. More in-depth research also examines the legal implications of online loan financing for fiduciary guarantees. Therefore, a research design suitable for use is a normative legal research design supported by legal sources from the Indonesian government and a review of relevant literature. According to McConville (2017), research that investigates a rule of law to answer certain legal issues can use a normative juridical research design to be able to provide in-depth and meaningful findings in terms of legal provisions.

**Data and Sources**

Research data is material that is usually used as the basis for analysis and conclusions in this study. The type of data used in this research is secondary data. Secondary data sources consist of legal materials and literature studies. Legal materials consist of three sub-sections based on research themes. First, the theme regarding the implementation of online loan financing, namely; (1) Law Number 11 of 2008 concerning Information and Technology as amended by Law Number 19 of 2016; (2) Financial Services Regulation No.77/PJOK.01/2016 regarding information technology-based money lending services; (3) Bank Indonesia Regulation Number 18/40/PB/2016 regarding payment transaction processing; (4) Bank Indonesia Regulation Number 19/12/PBI/2017 regarding the implementation of financial technology; (5) Circular Letter of Bank Indonesia Number 18/22/DSKP regarding the implementation of digital financial services; (6) Bank Indonesia Regulation Number 18/17/PBI/2016 concerning Electronic Money. Second, the theme of consumer risk management namely; (1) Regulation of the Minister of Communication and Informatics Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems; (2) Bank Indonesia Regulation Number 22/20/PBI/2020 concerning Bank Indonesia Consumer Protection (3) Republic of Indonesia Financial Services Authority Circular Letter Number 22/SEOJK.05/2021 concerning Implementation of Risk Management in the Use of Information Technology by Non-Bank Financial Services Institutions. Third, fiduciary guarantees consist of; (1) Law Number 42 of 1999 concerning fiduciary guarantees; (2) Civil Code; (3) Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds; (4) Regulation of the Minister of Law and Human Rights Number 25 of 2021 concerning Procedures for Registration, Amendment, and Abolition of Fiduciary Guarantees.

**Data collection technique**

Data collection techniques in empirical legal studies in the form of studies of government public documents in the form of primary legal materials and secondary legal materials consisting of Laws, Government Regulations, Bank Indonesia Regulations, Minister of Finance Regulations, and Civil KUP which are downloaded online and are relevant to the research theme. The data collected focuses on three themes, namely (1) legal rules regarding fintech lending?; (2) legal regulations regarding risk management for fintech lending consumers; (3) the rule of law regarding the implications of fintech lending and consumer risk management for fiduciary guarantees in fintech lending cases. As well as the identification of weaknesses and solutions offered based on various sources derived from previous studies.

**Data analysis technique**

This study uses content analysis techniques, namely content-oriented analysis techniques of written information in a text. The stages of content analysis are summarized as follows. The first stage is to identify research questions to be analyzed. In the second stage, the texts that have been collected are categorized by theme. Each data source represents a research theme. The theme regarding the implementation of online loan financing consists of six legal sources. The theme of consumer risk management consists of three legal sources. The theme of fiduciary guarantees consists of four legal sources. The third stage is coding data into content categories. Examination of emerging concepts and irrelevant information appearing in the text is then analyzed in a notebook. At this stage, the author is assisted by two experts in contract law and contract law to examine the data presented so that the results of data selection are reliable. In the last stage, the writer makes conclusions about the meaning of the data sources that have been analyzed.

**III. RESULT AND DISCUSSION**

**Legal Review on the Implementation of Consumer Risk Management in Online Loan Financing**

The findings reveal that there are no standard rules governing the implementation of consumer risk management in online loan financing in Indonesia. Indonesian law only has the Financial Services Authority (OJK) regulation Number 10/PJOK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI) in article 35 (Risk Management by Providers), briefly stipulating risk management on P2P lending platforms. This legal regulation focuses on online loan financing companies that do not yet cover risk management faced by consumers. The risks faced in these provisions include operational risk, strategic risk, compliance risk, and fraud risk. As a result, consumers will likely receive many bad and defective financing product offers, which of course will harm them. Theoretically, consumer risk occurs when products that do not meet quality standards can slip undetected through a control system and enter consumer markets. It is understood that the absence of strong legal regulations regarding consumer risk management can increase the likelihood of poor-quality online loan financing products appearing. Regarding consumer law, the Government of Indonesia has a consumer protection law which is regulated in Law Number 8 of 1999 concerning Consumer Protection with the legal basis being Article 5 paragraph (1), Article 21 paragraph (10, Article 27, and Article 33 of the Constitution). 1945. The Consumer Protection Act regulates the rights and obligations of consumers and producers that arise in their efforts to meet needs.

Risk management is not only important for companies, but also for society. OJK Regulation Number 10/PJOK.05/2022 concerning Information Technology-Based Joint Funding Services (ITBFS) article 35 regulates the obligations of fintech lending platforms to implement risk management effectively. The risks faced are operational risk, strategic risk, compliance risk, fraud risk, and other risks that may occur. In achieving the goal, every organization or society must face risks. Bank Indonesia (BI) and the Financial Services Authority (OJK) have some legal regulations regarding fintech services including legal regulations regarding payment systems, namely, "(1) Bank Indonesia Regulation No. 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing; (2) Bank Indonesia Circular No. 18/22/DKSP regarding the Implementation of Digital Financial Services; and (3) Bank Indonesia Regulation No. 18/17/PBI/2016 concerning Electronic Money. This is because the development of fintech has affected the legal system in Indonesia which is capable of crossing jurisdictional boundaries (Rahmayani, 2018). Risk management will assist in managing any risks, and private security that may occur and have an impact on organizational/community goals (Uña et al., 2023; Hussain et al., 2021; Keong et al., 2020).

Consumers need to carry out a risk management process in decision-making activities for online loan financing in a gradual and definite manner. To avoid the possibility of negative impacts from inaccurate consumer decision-making and failure to anticipate environmental changes. Previous studies have revealed the importance of consumer education about risk management, especially for low-income consumers. By evaluating risk management, they can make the right choice, and practitioners stimulate demand to suit their needs (Van Kleef et al., 2007). There are three benefits of risk management in consumer decision-making, namely; (1) consumers obtain sufficient information; (2) avoid problems by ensuring that consumers comply with the law and implement proper safety procedures; (3) minimize the potential consequences of risks that have a negative impact (Dror et al., 2015).

In considering fintech lending risk management, consumers need to understand the financing agreement. Funding agreements are agreements that are not regulated in the Civil Code but live in community relations based on the principles contained in Article 1338 of the Civil Code with the principle of freedom to make agreements. The agreement is legally made by fulfilling the conditions set out in Article 1320 of the Civil Code. If the conditions of Article 1320 of the Civil Code have been fulfilled, it will have legal consequences for the parties bound by the agreement and will apply as law for them, namely finance companies and consumers (Article 1338 of the Civil Code). The next consequence is that the agreement must be implemented in good faith and cannot be canceled unilaterally.

“Legal institutions for consumer financing in Indonesia began in 1988, namely with the issuance of Presidential Decree No. 61 of 1988 concerning Financing Institutions, and the Decree of the Minister of Finance no. 1251/KMK.031/1988 concerning Provisions and Procedures for Implementation of Financing Institutions and has been amended several times, most recently by Minister of Finance Decree No.468/KMK 017/1995. Then equipped with the Minister of Finance Decree No. 1169/KMK.01/1991 concerning leasing business activities and Decree of the Minister of Finance of the Republic of Indonesia No. 448/KMK 0.17/2000 concerning Financing Companies and Minister of Finance Regulation No.84/PMK.012/2006 concerning finance companies.”

The risk management process is a continuous, systematic, logical, and measurable process that is useful for managing risk. The risk management process can include the implementation of policies, procedures, and practices to carry out a risk assessment, avoidance, and mitigation. A very detailed risk management process is certainly a challenge for the community. In addition, the measurement of risk cannot always be relied upon to make consumer decisions. Because the discomfort caused by economic uncertainty may lead to an overestimation of risk. Because of this, the role of the rule of law in decision-making is very important, especially for people who make online loans for venture capital purposes. By following the legal rules of risk management, people can make smart risk decisions to increase their chances of getting the goal of making loans online. Other studies have a different opinion, that society is a living creature that will naturally anticipate and manage risks. In contrast to organizations that cannot manage risk, they are required to have risk management. However, from a legal perspective, the Government needs to build a legal framework as a form of legal responsibility for the community in building risk management for consumer decision-making regarding online loan financing.

Regulation of the Financial Services Authority (OJK) Number 10/PJOK.05/2022, article 35 requires companies to implement effective risk management which includes, “(1) active supervision of the board of directors, board of commissioners and sharia supervisory board; (2) adequacy of risk management policies and procedures as well as setting risk limits; (3) adequacy of risk identification, measurement, control and monitoring processes, as well as risk management information systems; and (4) a comprehensive internal control system.”

**Legal Review of Online Loan Financing and its implications for Fiduciary Guarantees**

The second finding reveals that the rule of law regarding online loan financing has strong implications for the existence of collateral. If the fintech lending service has a guarantee, it can strengthen the position of fintech lending in fulfilling its obligations to help the Financial Services Authority facilitate risk mitigation, especially the risk of lenders whose money is lent. OJK Regulation (POJK) Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI) article 35 paragraph (4) reveals that activities to facilitate risk mitigation are in the form of; “(1) risk analysis of the funding proposed by the borrower; (2) verify the identity of the user and the authenticity of the documents used; (3) perform billing; (4) facilitating risk transfer; and (5) provide risk transfer facilities over the collateral object if any.” On the other hand, the existence of such guarantees can be difficult for the community as fintech consumers because they may face default cases and have to deal with the law. Unfortunately, the 2016 Financial Services Authority Regulation (PJOK) states that fintech lending is not allowed to become a creditor. This is the reason why the majority of lenders provide financing in limited amounts with short and medium terms. Because long-term loan financing will increase losses in case of default and there is no guarantee of the material economic value provided by the borrower. But only obtaining permission to become a mediator or agent. This means that fintech lending has not been able to apply fiduciary guarantees for the financing activities they carry out.

Previous findings explain that the fintech lending admin is only responsible for providing a marketplace for online lenders and their consumers through the management platform. Admin is not responsible for credit transactions based on fintech lending carried out by both parties. The legal provisions used are Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Transactions and Information (Nugraheni & Aziza, 2020). Therefore, the rule of law regarding fiduciary guarantees has only been practiced by banking, mortgage, and leasing financial services. Even though the rule of law regarding fiduciary guarantees can minimize the potential risk of default which causes losses to fintech lending. These rules can protect both parties from unlawful practices. Moreover, the registration procedure and costs for making a guarantee deed can be done online as stipulated in Government Regulation Number 21 of 2015. This means that a Fiduciary Guarantee Agreement is a consensual and only obligatory agreement, that is, a Fiduciary Guarantee Agreement is valid enough with the agreement of the parties involved close it as long as it complies with the provisions of Article 1320 Civil Code. And only raises rights and obligations for the parties to later be by the agreed time and conditions. Then submit the object to be used as collateral through fiduciary submission (Satrio, 2005).

More concisely described in the scheme "The Role of Jurisprudence in Forming the Fiduciary Guarantee Law" concerning the process of forming the Fiduciary Guarantee Law (see figure 1). In the scheme, it is illustrated that the arrangement of fiduciary guarantees begins with concrete legal events that occur in society. Because there is no material law, the judge's decision on the fiduciary guarantee case becomes jurisprudence and becomes a reference for similar legal events. Seeing the development of the business world which increasingly requires legal certainty regarding fiduciary guarantees, the legislature then drafts fiduciary guarantee legislation and formulates from doctrine to technical implementation (Kamello, 2006).

Feedback

Material Law

There aren't any yet

Legislative

Plaintiff

UUJF

Jurisprudence

Decision

Judge

Incident

Law

concrete

Doctrine

Notary Public

Lawyer

Role in Forming Fiduciary Guarantee Law

Defendant

Feedback

***Figure 1.*** *The role of jurisprudence in the formation of fiduciary guarantee laws*

In Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking it is explained that fiduciary guarantees are an implementation of the precautionary principle. Law Number 42 of 1999 concerning fiduciary guarantees article 27 paragraph (3) explains that the advantage of having a fiduciary guarantee is that this guarantee will not be void if the debtor is bankrupt. However, from the consumer's point of view, the fiduciary juridical function in a fiduciary deed is not very profitable for the consumer. Consumers as creditors only have legal certainty over the repayment of their loans. Because the legal regulations for fiduciary guarantees are more in favor of the debtor. As a result, this rule of law can be abused by the debtor to charge much higher interest and fines. Even though the purpose of the implications of fiduciary guarantees is essential to obtain justice, legal certainty, and legal benefits.

2 factors from the UUJF can support the achievement of the legal objectives of fiduciary guarantees as shown in Figure 2.

Feed Back

Potency Conceptual Operational

-Judge Theory Practice

-Lawyer Justice

-Notary Public

-Doctrine Guarantees of

Fair and

Ideal fiduciary beneficial

guarantee------- UUJF Legal substance Law fiduciary legal

law certainty Enforcement certainty

Legal

benefits

Economic condition

-Banking

-Business

Feed Back

***Figure 2.*** *Ideals of Implications for Fiduciary Guarantees*

First, the legal substance is conceptual in the form of fiduciary guarantee arrangements in the form of a written law, second, law enforcement is at the operational practical level. Factors of legal substance (conceptional theoretical) and law enforcement (practical operational) must work together so that the ideals of fiduciary guarantee law are achieved, namely justice, legal certainty, and legal benefits. Several variables that affect the achievement of the objectives of the fiduciary guarantee law are described in the scheme below:

The government stipulates Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees to guarantee legal certainty regarding fiduciary guarantees. Then also regulated by Government Regulation no. 68 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making a Fiduciary Guarantee Deed and then replaced by Government Regulation Number 21 of 2015 and a set of implementing regulations.

“In the preambles of the Fiduciary Guarantee Law, it is stated that the stipulation of the law on fiduciary guarantees is due to several reasons: (1) The enormous and ever-increasing need for the business world for the availability of funds needs to be balanced with complete and clear legal provisions governing guarantee institutions; (2) Fiduciary guarantees as a form of guarantee institution are still based on jurisprudence and have not been fully and comprehensively regulated in laws and regulations; (3) To fulfill legal needs that can further accelerate national development and to guarantee legal certainty and be able to provide legal protection for interested parties, it is necessary to establish complete provisions regarding Fiduciary Guarantees, where these guarantees need to be registered at the Fiduciary Registration Office.”

The enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees can be seen as providing convenience facilities for the business world to further develop while at the same time guaranteeing legal certainty for providers of funds. This is because objects that are guaranteed through fiduciary can still be used by the owner of the object for his business capital. On the other hand, creditors get legal certainty because they have a fiduciary guarantee certificate. Creditors as Fiduciary Beneficiaries have the same executive powers as court decisions if the Debtor or Fiduciary Giver defaults. It is understood that the imposition of fiduciary guarantees on fintech lending services can provide legal certainty against the risk of default and make consumers more careful in making online loan financing decisions. Examining more deeply the Fiduciary Guarantee Law (UUJF) there are several important implications of enforcing fiduciary guarantees in lending practices.

“First, there is a transfer of rights over debt (cession). Fiduciary transfer (Article 19 to Article 24). The transfer of rights over debt (cession) is the transfer of receivables which is carried out with an authentic deed or private deed. What is meant by "transferring" includes selling or renting in the framework of its business activities. The transfer of rights to debt with fiduciary guarantees can be transferred by the Fiduciary Recipient to a new Fiduciary Recipient (new Creditor). This new creditor will register the transfer of fiduciary guarantees at the Fiduciary Registration Office. With this cession, all rights and obligations of the old Fiduciary Recipient will be transferred to the new Fiduciary Recipient and the transfer of rights to the receivables will be notified to the Fiduciary Giver. Second, the loss and loss of fiduciary guarantees caused by the elimination of debts guaranteed by fiduciaries; relinquishment of rights to fiduciary guarantees by Fiduciary Recipients; The destruction of fiduciary collateral objects does not erase insurance claims (article 25). Third, the occurrence of execution of fiduciary guarantees is because the Debtor or Fiduciary Giver defaults or does not fulfill their achievements on time to the Fiduciary Recipient, even though they have been given a subpoena (article 29 to article 34).”

Based on the data sources that have been mentioned, it is understood that the implications of fiduciary guarantees vary greatly depending on the circumstances that occur in loan financing activities carried out by both parties. Provisions regarding criminal acts in Law Number 42 of 1999 are regulated in Articles 35 to 36. Criminal acts regulated in the Fiduciary Guarantee Act (UUJF) are deliberately committing forgery and giving fiduciary without the written consent of the Fiduciary Recipient. Fiduciary forgery is regulated in Article 35 of Law no. 42 of 1999 concerning Fiduciary Guarantees reads:

“Any person who deliberately falsifies modifies, removes or in any way provides misleading information, which if it is known by one of the parties does not give rise to a fiduciary guarantee, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years. five) years and a fine of at least IDR. 10,000,000 (ten million rupiahs) and a maximum of IDR. 100,000,000 (one hundred million rupiahs). Based on Article 35 of Law no. 42 of 1999 concerning Fiduciary Guarantees, the criminal elements that must be met so that the perpetrator is prosecuted, namely by deliberately falsifying, changing, eliminating in any way, if known by one of the parties, and does not give birth to a fiduciary guarantee. Deeper, there are Fiduciary Guarantee execution models, namely; (1) by the nature of the execution (with an executorial title), namely through a court order; (2) in separate execution, namely by selling (without the need for a court order) before a public auction; (3) sold privately by the creditors themselves.”

UUJF's indecisiveness regarding the sanctions imposed relating to the non-registration of fiduciary guarantees causes loopholes for Fiduciary Givers, Fiduciary Recipients, or Notaries not to burden fiduciary collateral objects and not register them with the competent authority. These things violate the provisions referred to in the UUJF which require that the object of a fiduciary guarantee must be burdened and must be registered with the Fiduciary Registration Office by the place and position of the Fiduciary Giver.

Literature reveals that legal services related to the electronic fiduciary registration system are expected to be able to provide a positive trend for fintech. Because registration is faster, easier, and more accurate (Alfedo, 2021). As stipulated in the Regulation of the Minister of Law and Human Rights Number 25 of 2021 concerning Procedures for Registration, Amendment, and Abolition of Fiduciary Guarantees, specifically the right of access to electronic fiduciary registration for corporations as one of the applicants. The granting of this right is inseparable from the use of fiduciary guarantees in the financing distribution process.

In the end, legal rules for online loan financing and risk management for consumers are very important in the online loan financing decision-making process. Previous studies have revealed that the formation of a Law on Fintech is urgently needed in providing legal protection for fintech lending and its consumers. Both parties must be given the fairest legal treatment as stipulated in the 1945 Constitution. Because justice is essentially more important than legal certainty (Irawansah et al., 2021). It is hoped that a uniform fintech risk management tool will reduce barriers to supervisory bodies in fintech lending activities and encourage efforts to improve sustainable quality (Jain et al., 2023; Disemadi et al., 2020; Namchoochai et al., 2020; Giudici, 2018). The novelty of the research indicates that the currently available laws focus on fintech lending companies and are still weak from a consumer perspective. Therefore, the Financial Services Authority needs to formulate top risks in the online loan financing industry which will later become the basis for policy-making for stakeholders. Theoretically, risk management is connected with efforts to deal with losses and the level of company profitability. Meanwhile, from the consumer side, risk management will be useful in avoiding the negative effects of illegal fintech lending.

1. **CONCLUSION**

Based on the findings, it can be understood that the legal rules regarding risk management for consumers aim to provide legal clarity for financing risks using fintech lending services. By investigating the legal rules of risk management for fintech lending companies, consumers are expected to be able to handle and protect themselves from the biggest possible risks of making loan transaction decisions. The second finding explains the legal rules of fiduciary guarantees involving collateral objects. This legal regulation aims to provide legal certainty for creditors. It's just that the legal regulations for the existence of guarantees in credit through fintech lending services do not cover the role and responsibility of the organizer in the event of default which causes losses for fintech lending. Therefore, it is concluded that the legal regulations that contain legal provisions for online loans and risk management for consumers are still inadequate to be able to protect consumers. Fiduciary guarantees need to be harmonized with fintech lending services to provide legal certainty and clarity that strengthens legal rules regarding consumer protection. Collaboration between the government, financial services authorities, the people's representative council, and the wider community is highly desirable for better legal compliance. The government needs to draft a law on fintech lending to support the regulations of the Financial Services Authority and provide legal clarity for the wider community. Future studies can consider the theoretical framework and other factors that influence consumer decisions in using fintech services. Diverse research methods and a wider population within an international legal framework could be the next steps for a greater empirical contribution to science.

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