

Legal Protection for Customers in Information Technology-Based Financing with Sharia Principles (Study of PT Ammana Fintek Syariah)

Titin Fatimah^{1,2,*} Gemala Dewi¹

¹*Faculty of Law, Universitas Indonesia, Depok, Indonesia*

²*Faculty of Law, Universitas Indonesia, Depok, Indonesia*

**Corresponding author. Email: titinfh@gmail.com*

ABSTRACT

This research discusses the information technology-based financing implemented by sharia financing company (PT Ammana Fintek Syariah). Information technology-based financing services on the one hand provide benefits as an alternative financing for consumers and MSME entrepreneurs, but on the other hand, they contain high risks considering that financing providers and financing recipients do not know each other and have never met. The study aims to examine legal protection principles and risk mitigation for consumers in peer-to-peer lending based on Sharia Law and Indonesian legislation. This research will analyze those problems by applying normative-juridical and qualitative research methods. This study found that the standard contract made unilaterally by the financial technology company does not protect consumer rights. The Indonesian Financial Services Authority Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Lending Service is not sufficient as a legal basis of customer protection. The regulation contains many weaknesses, such as it does not regulate on sharia peer-to-peer lending. It creates a legal vacuum and legal uncertainty to Muslim consumers. Therefore, POJK No. 77/POJK.01/2016 has to be amended to accommodate the interest of Muslim consumers and this sharia financial technology company.

Keywords: *law, information, consumers, financing, sharia*

1. INTRODUCTION

Information technology-based financing activities are currently growing rapidly in Indonesia. The increasing needs of the community for cash funds quickly, easily and efficiently make this financing service an alternative financing for micro, small and medium scale businesses (MSMEs). On the one hand, information technology-based financing services provide benefits to consumers and SMEs, but on the other hand technology-based financing services contain high risks that not only harm consumers, but also disrupt the stability of the nation's economy. Therefore, the Indonesian Financial Services Authority on December 29, 2016 enacted regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (hereinafter referred to as "POJK No. 77/POJK.01/2016"). Based on POJK No. 77/POJK.01/2016, providers of information technology-based financing services are declared as other financial institutions (Article 2). They are obliged to register and permit as a financial technology lending company in the OJK (Article 8 paragraph (2)).

Based on OJK data as of May 31, 2019 there were 113 providers financial technology lending company, namely 107 conventional and 6 sharia [1]. The number of registered lending companies is still very small when

compared to the unregistered ones. There are still many unregistered lending companies showing that the implementation of POJK No. 77/POJK.01/2016 is still ineffective in the community.

In addition, POJK No. 77/POJK.01/2016 also does not regulate sharia financing based on information technology, even though based on OJK data there are 6 sharia lending companies. The development of information technology-based Islamic financing services is still far behind that of conventional financing services. One reason is POJK No. 77/POJK.01/2016 does not regulate information technology-based Islamic financing services. The absence of regulations on information technology-based Islamic financing services in POJK No. 77/POJK.01/2016 raises legal uncertainty for the providers and users of these financial services so that Islamic lending company becomes less developed and has no clear legal basis.

The objective of the implementation of information technology-based sharia financing services is to provide convenience and efficiency in the provision of capital to people who need capital and also want its application in accordance with Islamic regulations. Therefore, it is very important to study legal protection for consumers in information technology-based financing with sharia principles because information technology-based financing has a high risk and in its implementation there are many weaknesses in terms of consumer protection, so risk

mitigation efforts are needed and efforts to resolve problems/disputes require a form of legal protection.

1.1. Research Purpose

This research was conducted to explain the principle of legal protection for consumers and risk mitigation in information technology-based Islamic finance based on Islamic law and statutory regulations.

1.2. Research Methods

This study uses normative juridical research methods, namely legal research that according to Soerjono Soekanto it includes the principles of law [2], conceptualized as rules or norms which are benchmarks of appropriate human behavior [3].

The nature of the research used is descriptive research which aims to provide detailed data on the implementation of information technology-based financing transactions based on laws and regulations in force in Indonesia as well as the application of consumer protection principles in the financing agreements used by the parties.

In this study, researchers conducted data collection by means of document studies (library research) of library sources, observations involved (participant observation) by becoming a participant/investor in PT Ammana Fintek Syariah (“PT AFS”), and interviews with the Indonesian Financial Services Authority (“OJK”), the National Sharia Council of Indonesian Ulema Council (“DSN-MUI”) and PT AFS.

The data used in this study are primary data and secondary data. Primary data were obtained directly from informants interviewed by researchers. Secondary data is taken from the laws and regulations and DSN MUI fatwas, books, research results, news and other literature related to information technology-based financing services. In the context of this writing, the data obtained will be analyzed based on the *Maqashid* rules and theories of sharia to get answers to the problem formulation. Also, this paper seeks to find out whether the contents of the financing agreement are in accordance with sharia principles and legislation and provide legal protection for the financial giver or the financing recipient as consumers who use information technology-based financing services.

2. RESEARCH RESULTS AND DISCUSSION

2.1. Information Technology Based Financing Services According to Islamic Law and Legislation in Indonesia

Information technology-based financing services are carried out by providers and service users based on an

online standard agreement or financing agreement. In the past, a contract was deemed to occur when the parties were at the same time and place in a meeting (assembly) and agreed (there was *ijab* and *qabul*) directly. Now with the rapid development of technology, a transaction agreement can be done without space and time restrictions. The parties can carry out transactions wherever and whenever. Even though the parties are not in the same place and there are no face-to-face meetings, the agreement (*ijab* and *qabul*) can be created with the support of technological instruments. Information technology-based loan or financing agreements are made online (online contract) which is realized in electronic media, because the binding object is digital content, such as internet access services.

In Islamic economic activities in the field of *muamalat* there are basic and most important rules and norms and agreed upon by the majority of scholars, namely: [*Al Ashlu fil mu'alamati ibahatu hatta yadullu dalilun 'ala tahrimiha*] it means "The basic law of *muamalah* is permissible, until there is an argument forbidding it". Based on this rule, sharia financing transactions based on information technology (peer to peer lending) are permitted in Islam as long as their implementation is carried out in accordance with sharia principles, i.e. free from the element of *gharar* (obscurity), usury and *maisir* (speculation) as well as for lawful purposes as confirmed in DSN MUI Fatwa No. 117/DSN-MUI/II/2018.

Gemala Dewi, Wirdayaningsih and Yeni Salma Barlinti explains the contract in information technology-based financing services is based on sharia principles that must meet these requirements: (1) The Covenant (*Al-'aqidain*) subject, namely the parties who make a sound, mature, agreement can distinguish between good and bad (*tamyiz*) and are free from coercion (*mukhtar*), and not in a *taflish* / bankruptcy situation; (2) The object of the Agreement (*Mahallul 'Aqd*) must exist when the contract is held, halal, has a beneficial value to humans and is not prohibited by sharia, is clear and recognizable or known by the parties and can be handed over; (3) The purpose of the agreement (*Maudhu 'ul' Aqd*) is to make a contract that is required in accordance with the provisions of the sharia; (4) *Ijab* and *Qabul* (*Sighat al 'Aqd*), which is an expression of the parties who make a contract both verbally, and in writing, signs and actions that show the act of giving and receiving from parties who mutually understand the act of the engagement and all the legal consequences [4].

Each sharia financing agreement must meet the legal requirements and terms according to Islamic law and legislation in order to be binding and give rise to legal relations (rights and obligations) for the parties (Article 1320 jo Article 1338 of the Civil Code and Article 18 paragraph (1) of the Law Number 11 Year 2008 Regarding Information and Electronic Transactions). The contract creates legal relations for the parties involved in it, namely: the financier, the recipient of the financing and the organizer of lending company. Financiers include Indonesian citizens, foreign nationals, Indonesian/foreign legal entities; Indonesian/foreign business entities; and/or

international institutions (Article 16 and 17 paragraph (2) POJK No. 77/POJK.01/2016).

PT AFS is one of the first sharia financial technology lending companies registered at OJK on December 22, 2017 based on Letter No. S-1320/NB.2234/2017 Subject: Registered Proof of PT Ammana Fintek Syariah. At that time, the fatwa the National Sharia Council of Indonesian Ulema Council (DSN MUI) relating to financial technology had not been issued. The DSN MUI Fatwa No. 117/DSN-MUI/II/2018 concerning Information Technology Based Financing Services Based on Sharia Principles was issued on February 22, 2018. Thus, from December 22, 2017 to February 22, 2018 PT AFS run business without clear regulation.

POJK No. 77/POJK.01/2016 does not regulate information technology-based Islamic financing services. There is no obligation for sharia lending companies to report the effectiveness of sharia conformity certificates to OJK, and therefore OJK cannot impose sanctions if sharia companies violate sharia provisions. OJK also does not extend the effectiveness of conformity certificates, but still declares sharia companies. In addition, several provisions in POJK No. 77/POJK.01/2016 are not in accordance with sharia principles, including the regulation of loan interest rates in electronic documents as an item that must be regulated in the agreement (Article 19 and Article 20). This creates legal vacancies, legal uncertainty and disadvantages for consumers and sharia lending companies that carry out information technology-based sharia financing services.

Legal certainty is one of the principles that must be applied in the context of consumer protection as determined in Article 2 of Law No. 8 of 1999 concerning Consumer Protection. Therefore, to create order, legal certainty and guarantee of legal protection for consumers, according to the author there needs to be specific arrangements regarding sharia financing services based on information technology.

2.2. Legal Protection for Customers in Funding Based On Information Technology

Legal protection is the organization of various interests or rights of a person granted by law by allocating a power to act in the framework of their interests [5]. Legal protection related to consumer protection is how to formulate legal instruments that can increase the compliance of business actors in providing protection for consumers [6].

Islamic law strongly guarantees consumer protection in all aspects of life. Islam commands Muslim consumers to consume and use good products / services (*halalan thoyiban*), which are beneficial and do not conflict with sharia. Business must be fair, honest and not wrong and not wronged, as stated in the QS. Al-Baqarah verse (279). Islamic law also stipulates several principles that are used as guidelines in conducting transactions, namely: the principle of *at-Tawheed* (insisting on God) contained in the QS. Al Hadid [57]: 4, *al-amanah* (responsibility for

trust) is contained in the QS. Al Ma'arij [70]: 32, *ash-shiddiq* (honesty) is mentioned in the QS. As Syua'ra [26]: 181-183, *al-adl* (justice and balance) is reflected in the QS. Al Hadid [57]: 25, *al-khiyar* (the right to vote), *at-ta'wun* (please help) are found in Al Maidah [5]: 2, security and safety, and *at-taradhin* (willingness) is contained in the QS. An Nisa [4]: 29 [7]. The values and principles of consumer protection are reflected in sharia *maqashid*. *Maqashid* sharia is something that can achieve benefits and reject *mudharat*. Imam Asy-Syatibi in his book *al-Muwafaqat fi Usul al-Ahkam* explained that there are 5 (five) forms of sharia *maqashid* or *kulliyat al khamsah*, namely: protecting religion, the soul, the mind, property, and offspring [8].

Consumers in information technology-based financing are those who use financing services, namely the financiers and recipients of financing. Meanwhile, the organizer is a business actor because his business activities bring together the interests of the financing giver and the recipient of the financing. Legal protection for consumers encompasses all efforts that guarantee legal certainty to provide protection for consumers from all losses due to the use of goods and / or services. Consumers need to get legal protection because the position of consumers is weaker than business actors. Consumers of information technology-based financing services have no other choice, other than to accept all the terms and conditions set by the lending company in order to obtain funding or provide financing. Consumers are very dependent on lending companies' products and financing services because they need funding, but consumers lack information and bargaining power economically.

Based on Article 3 of Law No. 8 of 1999 concerning Consumer Protection consumer protection needs to be carried out for the purpose of: (a) increasing consumer awareness, ability and independence to protect themselves; (b) elevating the dignity of consumers by avoiding negative access to the use of goods and / or services; (c) increasing consumer empowerment in choosing, determining and claiming their rights as consumers; (d) creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information; (e) fostering awareness of business actors about the importance of consumer protection so as to grow honest and responsible attitudes in doing business; (f) improve the quality of goods and / or services that guarantee the continuity of the business of producing goods and / or services, health, comfort, security and consumer safety.

The basic principles of consumer protection in information technology-based financing services include aspects of: (a) transparency, (b) fair treatment, (c) reliability, (d) confidentiality and data security, and (e) simple, fast resolution of consumer disputes and affordable costs as regulated in Article 29 POJK No. 77/POJK.01/2016.

Information technology-based financing services are transactions that contain high risk due to various reasons, namely: first, the financing giver and the recipient of the financing have never met; second, most financial technology lending company does not ask for collateral

from the loan recipient; third, the difficulty of analyzing the filing of financing that does not have a background in lending in financial institutions; and the fourth provision of this financing is not guaranteed by the Deposit Insurance Corporation (LPS) or the government. Therefore, before using financing services, both consumers (users of financial services) and business organizers (providers of financial services) must have careful consideration, profit and loss, and risks that may arise in the financing.

As a form of preventive action for failing to protect the personal data of consumers it manages and to avoid misuse of consumer data, the lending company must have internal rules or standard operating procedures that describe in detail the implementation of regular business processes, conduct reviews, periodic internal and external audit processes and anticipate the occurrence system failures, such as hacking, phishing, or hardware and software failures, as specified in Article 5 paragraph (1) and (2) of the Republic of Indonesia Minister of Communication and Information Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems. In order to protect the confidentiality of consumer data in financing based on information technology, the organizer pursuant to Article 26 POJK No. 77/POJK.01/2016 is required to do the following things:

- a) maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages since the data was obtained until the data is destroyed;
- b) ensure the availability of authentication, verification, and validation processes that support the discrepancy in accessing, processing and executing personal data, transaction data, and financial data that it manages;
- c) guarantee that the acquisition, use, use and disclosure of personal data, transaction data and financial data obtained by the organizer is based on the agreement of the owner of personal data, transaction data and financial data, unless otherwise stipulated by statutory provisions;
- d) provide other communication media in addition to an information technology-based electronic loan and loan service system to ensure the continuity of customer services that can be in the form of electronic mail, call centers, or other communication media; and
- e) notify the owner of personal data, transaction data and financial data in writing if there is a failure in protecting the confidentiality of personal data, transaction data and financial data under management.

In its privacy policy, PT AFS promises to maintain the confidentiality of the personal information/data of its customers and is committed to protecting consumer personal information and protecting it from manipulation, loss, counterfeiting or unauthorized access to irresponsible purposes. PT AFS will only use customer information data in accordance with the agreement and the provisions of Article 26 in conjunction with Article 39 POJK No. 77/POJK.01/2016. The consumer, as the owner of the data/information, has the right to cancel or change part of the agreement on the disclosure of data and/or information

that had been previously approved by submitting the cancellation or change in the form of electronic documents.

To prevent misuse of funds in the administration of information technology-based financing, PT AFS and other lending companies apply the precautionary principle by providing escrow accounts and virtual accounts as stipulated in Article 24 POJK No. 77/POJK.01/2016. The use of escrow accounts and virtual accounts on behalf of consumers is intended so that consumer funds will not be lost and will not be recorded as wealth or property of the organizer. This is so that if the organizer goes bankrupt or loses these funds, they will not be lost. In addition, the process of financing transactions becomes easier and remains safe with the Escrow account.

Before financing funds are channeled to financing recipients, PT AFS and other lending companies generally conduct an analysis of financing recipients using a customer recognition system or Know Your Customer (KYC) in the form of a credit score. According to Evan Hendricks: "A credit score is a number that reflects your credit worthiness at a given point in time. For most models, the higher the score, the better the risk. People with higher scores often can obtain mortgages, credit cards, loans, and insurance at more favorable rates. Conversely, the lower the score, the less favorable the terms will be in any offer that is made. The credit score is based entirely on data in your credit report, which is why the bulk of this book is devoted to credit reports and the system that creates them." [9].

With a credit score system, the organizer evaluates the ability of the loan recipient / financing to use the capital received in accordance with its designation, arranges the financing funds perfectly, and has the good faith to repay the financing that is due on time in accordance with the agreement [10]. In its application platform PT AFS displays profiles of prospective borrowers and their credit scores A, B1, B2, B3, C1, C2, C3, and so on. The score is based on the results of evaluations and reviews of data provided by the applicant for financing, including business licenses owned, business prospects, and a track record of financing that has been done, as well as records and results of field reviews conducted by PT AFS to the UMKM capital applicants. The higher grade indicates the applicant has a higher ability to repay and has a lower risk of non-performing loans or default conditions.

According to Mr. Zeinuri, the Head of Risk Management of PT AFS in an interview on July 8, 2019 stated that legal protections carried out by PT AFS for consumers consist of two forms, namely: first, preventive legal protection to mitigate financing risks, including the use of a credit scoring system. Also, the application of standard operating procedures (SOPs) ranging from the financing process to information security system and guarantees of confidentiality of consumer data. Secondly, legal protection is repressive by way of deliberation in resolving disputes, if the dispute is unsuccessful it will be settled according to the choice of the forum agreed by the parties in the Financing Agreement.

In financing at PT AFS [11] there was a guarantee given by the recipient of the financing (MSME partners), so this gave protection to the financiers (both Active Investors and Passive Investors) to execute the guarantee referred to in the event that the recipient of the financing could not repay the debt. Each recipient of financing at PT AFS has a companion in charge of conducting field reviews, meetings and monitoring the business progress of the financing recipients. This assistance is done every month as needed. This is done so that MSME partner businesses (financing recipients) develop and survive and so that MSME partners are able to return funding on time. PT AFS always followed up every consumer complaint by sending a warning letter via email/telephone. The company sends a statement letter regarding the commitment to solve the problem, and if necessary PT AFS will conduct a meeting with the consumer to resolve the problem with negotiation for consensus.

2.3. Accountability for Losses in Information Technology-Based Financing Services

Accountability comes from the word "responsibility" which means a condition that makes a person obliged to bear everything [12]. Responsibility is a burden that arises morally, a commitment to what must be done, both based on the agreement / contract and the law [13]. Based on the law of civil engagement there are two types of legal responsibilities, namely legal liability due to contractual agreements and liability due to the law, both arising due to the law or as a result of acts against the law (Article 1365 of the Civil Code). In information technology-based financing transactions, the contractual relationship between the provider and the consumer is based on a standard agreement. If the consumer loses, the lending company as the organizer may be held liable if it is proven that there are parts of the contract that may not be have been fulfilled by the organizer. In this case, consumers must prove several important elements in an agreement, namely the contract relationship, reliance (good faith) and the rights and obligations of each party.

Although PT AFS has informed consumers about the risks associated with the use of information technology-based financing services, PT AFS cannot limit its liability for losses or damages caused by negligence or mistakes by PT AFS, as stipulated in Article 37 POJK No. 77/POJK.01/2016. The article governs that the organizer is responsible for user losses arising from errors and/or negligence, directors, and/or organizer employees. If the organizer is proven to have made a mistake or practiced negligence in managing and operating an information technology-based financing service, the organizer may be held accountable and be subjected to administrative sanctions by OJK. Administrative actions include a written warning sanction; fines, namely the obligation to pay a certain amount of money; restrictions on business activities; and license revocation (Article 47 POJK No. 77/POJK.01/2016). Sanctions imposed by the AFS are not

given in stages. Imposing sanctions depends on the magnitude of the violations committed. Before giving sanctions, OJK first clarifies the parties to the dispute, evaluating if there is proof of violations as a lending company. If so, the lending company will be given sanctions. Imposing sanctions from OJK is solely for guidance to the lending company so that no other bigger problems occur.

PT AFS has obtained the sharia conformance certificate from DSN MUI and permission from OJK to provide information technology-based financing services based on sharia principles. According to Mr. Hidayatullah, Secretary of the Education, Socialization and Education Division of the DSN-MUI Daily Executing Agency, in an interview on 18 July 2019, he referred to MUI DSN Decree No. Kep-01/DSN-MUI/VI/2016 concerning Operational Standards and Procedures for the Issuance of Sharia Conformity Certificates. This is known as the sharia conformity certificate owned by PT AFS is valid for 3 (three) years and can be extended.

The financing agreement, contract terms and conditions and privacy policy of PT AFS were evaluated by DSN MUI and OJK at the time of registration as a lending company in the OJK. There were never any problems or complaints against PT AFS regarding the contract or sharia financing services that it managed because it was overseen by the Sharia Supervisory Board (DPS). There are two financing models implemented by PT AFS, namely direct financing done without a field partner and indirect financing carried out with a field partner engaged in sharia microfinance institutions, such as Islamic cooperatives/BMT. PT AFS does not collect, store or manage funds from investors. Funds submitted by investors enter the escrow account and the virtual account of the investor or financier is then distributed by PT AFS to the recipient of the financing. PT AFS gets wages (fees) from financiers and recipients of financing.

Based on Article 29 POJK No. 77/POJK.01/2016 providers of information technology-based financing services are required to apply the basic principles of consumer protection which include: aspects of transparency, fair treatment, reliability, confidentiality and security of data as well as simple, fast and affordable cost of dispute resolution.

In general, the use of standard clauses in the PT AFS Financing Agreement does not contain standard clauses that are prohibited in Article 36 POJK No. 77/POJK.01/2016 jo Article 22 POJK No. 1/POJK.07/2013 and SEOJK No. 13/SEOJK.07/2014 jo Article 18 UUPK. But, there is several clauses that are detrimental to consumers. For example, Article 3 of the PT AFS Financing Agreement that is regulated regarding the rights and obligations of the parties. Active Investors are entitled to represent Passive Investors in carrying out financing of business objects directly, without precedence, by granting a letter of appointment and power of attorney signed by the Passive Investor. The Active Investor, as the manager of the capital participation of the parties, has the right to make various decision of financial and operational related to financing the business object. The Passive Investor

obliged to provide a number of equity to the Active Investor based on their investment portion to finance the business project.

As a consumer (Passive Investor) in the financing agreement, the writer only gets a notification or portfolio of refunds and never gets a report on the business development of the MSME he is funding. There is no obligation by active investors (BMT) and PT AFS to provide reports on the development of the business object, causing consumer to find it difficult to ensure that the funds provided are actually used in accordance with their intended purpose in the financing agreement. Even as of this writing PT AFS has not provided a visit or meeting facility between the financiers and the recipients of

3. CONCLUSION

Information technology based sharia financing services may be carried out according to Islamic Law as long as their implementation is in accordance with sharia principles as a form of legal protection and risk mitigation for consumers. The information technology-based sharia financing services is not regulated in POJK No. 77/POJK.01/2016 so that this creates legal uncertainty and lacks legal protection for Islamic lending companies and Muslim consumers who use these services. POJK No. 77/POJK.01/2016 still contains many weaknesses and shortcomings. POJK No. 77/POJK.01/2016 needs to be revised or it needs to form a new regulation that specifically regulates the implementation of Information technology based sharia financing services. It can provide legal certainty and consumer protection and accommodate the interests of Islamic lending companies and consumers. Legal protection carried out by PT AFS is quite adequate, but there are still many shortcomings. Therefore, PT AFS must revise the financing agreement clauses that are detrimental to consumers. It can also hold meetings and field trips so that the organizers and consumers, both financiers and recipients of financing, know each other so that they can get direct and accurate information about the funding provided, business development UMKM. This, ultimately, can minimize the emergence of problems in the future.

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