

RECONSTRUCTION OF FINANCIAL TECHNOLOGY-BASED TRANSACTION REGULATION IN PROTECTING CONSUMERS

ARI RAHMAD HAKIM BUDIAWAN F¹, ZAINAL ASIKIN², MUHAMMAD SOOD³,
and MUHAIMIN⁴

^{1,2,3,4} Faculty of Law, Social Science and Political Science, University of Mataram, Indonesia.
Email: ¹arirahmadhakim@gmail.com

Abstract

The phenomenon of information technology did not emerge abruptly; rather, it is the result of historical developments and evolving human needs. The Fourth Industrial Revolution has accelerated the digitalization of commerce, enhancing efficiency while also introducing risks, such as data misuse and the proliferation of illegal online lending. Existing regulations are insufficient in protecting consumers due to weak law enforcement. The state has a constitutional obligation to safeguard the rights of its citizens. Therefore, legal protection for digital consumers must be strengthened through regulations that are responsive, fair, and adaptable to technological advancements. This study applies the theories of utilitarianism, the welfare state, legal protection, legal certainty, and developmental law. The findings of this research are as follows: 1) Fintech is the result of the interaction between technology and economic needs, serving as both a social and legal instrument to support public welfare; and 2) The urgency of regulating financial technology-based financial transactions in order to ensure legal protection for consumers in Indonesia has become increasingly apparent, considering that current law enforcement still relies on the Consumer Protection Law and the Criminal Code, rather than on the Financial Services Authority Regulation; 3) The reconstruction of a regulatory model for financial technology-based financial transactions aimed at consumer protection can be realized through the formulation of Government Regulations containing provisions on clear definitions, principles of transparency, consumer protection, data security, technical standards, supervisory and compliance mechanisms, the principle of inclusivity, as well as effective dispute resolution mechanisms and strict sanctions for violations.

Keywords: Reconstruction, Regional Legal Products, Effectiveness.

INTRODUCTION

Questions about values in social phenomena are also relevant to the emergence of information technology in the era of globalization, marked by the Fourth Industrial Revolution. This revolution is both progressive and transformational, influencing various aspects of life on a broad scale¹, including its impact on the trade of goods and services, which offers businesses opportunities to market products through various mechanisms, both conventional and digital. This has increased convenience and accessibility for consumers. However, technological advancement also brings challenges, such as threats to data security and personal privacy. These challenges are closely related to the principles of Human Rights, which require the state to respect, fulfill, and protect² the fundamental rights of every individual, without discrimination based on origin, race, or other status.

The active role of the state in providing legal protection to its citizens is a constitutional obligation that must be realized through concrete legal policies and instruments. This is constitutionally affirmed in Article 28D paragraph (1) of the 1945 Constitution of the Republic

of Indonesia, which states, every person shall have the right to recognition, guarantees, protection, and certainty before the law and equal treatment before the law.

Based on this philosophical foundation, in theory, legal protection for consumers in the digital era emphasizes the recognition of consumers as legal subjects who possess rights and obligations safeguarded by law. Consumers are viewed as active legal subjects, not passive ones, and are entitled to legal protection in every digital transaction, particularly those involving trade in goods/services and financial institutions, whether banking or non-banking. This reflects the vital societal role of consumers, as highlighted by Stephen Liestyo and Rayendra L. Toruan³. According to Liestyo et al., banking has become a part of modern lifestyles, operating both conventionally and digitally, such as through the increasingly prevalent fintech P2P lending services.

Legally, the protection of consumers as legal subjects is affirmed in human rights norms, particularly Articles 3 and 5 of Law No. 39 of 1999 on Human Rights, which guarantee fair and equal legal protection for every individual. This is further reinforced in consumer protection under Article 1 point 1 of Law No. 8 of 1999 concerning Consumer Protection (UUPK).

Sociologically, data from the Indonesian Consumers Foundation (YLKI) shows a rising trend in consumer complaints, from 402 cases in 2020 to 535 in 2021 (a 33% increase), and then to 882 in 2022 (a 64% increase). The majority of these complaints involve financial services, particularly illegal online lending⁴. According to Indef researcher Ahmad Heri Firdaus, the increase in consumer complaints in financial and transportation services reflects a decline in service quality. In the financial sector specifically, the rise in complaints is largely attributed to weak protection of customer data, which leads to easy leakage of personal information⁵. According to Nenden Maya Rosmala Dewi, fintech especially online lending poses serious risks such as high interest rates, aggressive debt collection, and data misuse. Many cases show psychological impacts including suicide, thus calling for stricter regulatory oversight to protect the public⁶. The disparity between digital business actors who control the systems and consumers who are technically disadvantaged leaves consumers vulnerable to rights violations. The main issue lies in the gap between social developments and the existing legal framework, causing the law to lag behind in responding to such dynamics a condition known as *het recht hink achter de feiten aan* (the law limping behind events)⁷.

Based on the previously outlined legal issues, several legal implications arise, leading to the emergence of the following problems. First, a philosophical problem, in which consumer protection within the fintech sector reveals a crisis in achieving the values of justice and legal certainty, with the state not yet fully optimizing its role in safeguarding the rights of its citizens. Second, a theoretical problem, namely that existing consumer protection regulations remain declarative in nature and are not supported by adequate law enforcement mechanisms. Third, a sociological problem, in which the gap between legal norms and social realities leaves consumers especially those with limited technological literacy vulnerable to exploitation in digital transactions.

The complexity of these legal issues in the practice of technology-based financial services presents a significant risk of harm to consumers. This underlines the urgent need for in-depth research to formulate a regulatory model for fintech transactions that ensures fair and sustainable consumer protection.

METHODE

The type of research employed in this study is normative legal research. According to Peter Mahmud Marzuki, normative legal research aims to discover coherence-based truth, namely to assess whether legal rules align with legal norms, whether commands or prohibitions are consistent with legal principles, and whether an individual's actions conform to legal norms (not merely legal rules) or legal principles⁸. This research utilizes several approaches: statutory, conceptual, analytical, and comparative, as well as historical, philosophical, and case-based approaches. It relies on library research or secondary data, which includes primary, secondary, and tertiary legal materials. The collection of legal materials is conducted through documentary studies concerning the constitutional responsibility of the state in protecting consumers. The collected legal materials are then analyzed through a series of consistent, systematic, and structured activities, including presentation, examination, systematization, interpretation, and evaluation.

RESULTS AND DISCUSSION

1. The Essence of Financial Transactions Based on Financial Technology

Currently, humanity is undergoing an increasingly rapid digital technological revolution. This change, often referred to as innovative disruption, has transformed modes of social interaction and interpersonal relations in modern society. The pace of digitalization surpasses that of other sectors, with mobile phone users now outnumbering those with access to basic necessities such as electricity and clean water. This phenomenon illustrates that digital technology has permeated nearly all aspects of life, including transportation, healthcare, education, commerce, hospitality, and financial systems⁹.

Luciano Floridi simply interprets digital transformation as a process through which humans reshape societal patterns, particularly through the use of digital technologies in everyday life. The impact of this transformation involves a shift in social patterns, including modes of information and communication, as well as the emergence of new socio-economic structures¹⁰.

From a juridical standpoint, Electronic-Based Trading (Perdagangan Melalui Sistem Elektronik or PMSE), as regulated in Article 1 point 2 of Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems, refers to transactions conducted via a series of electronic devices and procedures commonly known as e-commerce including the use of financial technology (*fintech*)¹¹. Fintech, from a market perspective, is a technological innovation that transforms financial services to become more efficient and inclusive, expanding access to the financial system particularly for marginalized groups. From the user perspective, fintech provides technological solutions that simplify financial management through digital

services such as payments, investments, and personal finance management. In terms of technological innovation, fintech is positioned as a transformative force that enhances financial service accessibility and efficiency.

From a regulatory standpoint, a balance is needed between fostering innovation and providing legal protection. Fintech not only creates new business models but also expands financial access, especially through mobile devices widely used by the Indonesian population. From the lens of economic law, fintech is not merely a technical tool but a transformational means for realizing socio-economic justice. As part of an "instrumental being," fintech responds to the need for accessible, efficient, and affordable financial services and assumes an ethical role by reaching marginalized groups and overcoming social and geographical boundaries. Thus, fintech as an instrumental being represents a technological product that fulfills the demand for rapid and inclusive financial access while ethically extending services to the underprivileged across socio-economic divides.

Philosophically, fintech must be understood as a normative and ethical tool for realizing distributive justice in accordance with the principles of the welfare state and Pancasila. Fintech can accelerate financial inclusion and economic empowerment for the lower-income population, but requires state regulation to maintain a balance between innovation and public protection to ensure the fintech ecosystem operates fairly and securely¹². The essence of fintech lies in its function as a "systemic instrument" that emerges from the interaction between technology and economic needs, serving as a transformational means for strengthening the state's capacity to achieve social welfare in accordance with constitutional mandates.

As a legal and economic instrument, fintech is not neutral, but ethically and juridically bound to the national legal ideals aimed at achieving social justice, general welfare, and protection of constitutional rights under the 1945 Constitution. This contrasts with Jeremy Bentham's utilitarian view, which prioritizes the happiness of the majority and risks neglecting vulnerable groups in fintech contexts often benefiting only active users and dominant corporations. As a middle ground, the welfare state seeks to reconcile Richard A. Posner's theory of legal efficiency, which considers efficiency the sole rational standard in evaluating legal polic¹³, overlooking inefficient economic distributions with John Rawls's rejection of utilitarianism, as it fails to safeguard individual rights and the principles of justice. Rawls formulated two principles of justice: equal basic liberties and social and economic inequalities justified only if they benefit the least advantaged (*the difference principle*)¹⁴.

The Welfare State theory combines economic efficiency with moral and constitutional objectives, namely the protection of human dignity and social justice. The state plays a role as a regulator that balances individual rights and collective interests, in line with the mandate of Articles 33 and 34 of the 1945 Constitution and the value of social justice in the Preamble of the 1945 Constitution. This idea aligns with the progressive law theory of Satjipto Rahardjo, who views law as a tool to achieve substantive justice and public welfare, rather than merely an autonomous normative system¹⁵. Therefore, the state is responsible not only for regulating but also for shaping an inclusive and just fintech ecosystem.

2. The Urgency of Regulating Financial Technology-Based Financial Transactions in Achieving Consumer Legal Protection: A Case Study Approach

a. The decision Number 524/Pid.Sus/2020/PN Jkt.Utr.

Duan Xiaoliang was charged with running an illegal online lending service through PT Vega Data Indonesia without OJK approval, using the “Toko Tunai” and “Kascas” applications. Consumers were required to submit personal data and were subjected to high deductions and interest rates.

During debt collection, the defendant was involved in intimidation and the dissemination of victims' data. He was sentenced to one year in prison under the Consumer Protection Law and the Criminal Code.

The judge declared the defendant guilty for his role as the Coordinator of the Desk Collection and sentenced him to 9 months and 15 days in prison. Additionally, the judge ordered the destruction of the evidence and emphasized the importance of taking action against illegal online lending practices.

This decision serves as a stern warning that illegal online lending practices and unlawful debt collection that harm society cannot be tolerated and must be met with strict sanctions from the court.

b. The decision Number 525/Pid.Sus/2020/PN Jkt.Utr.

Defendant Li Zhaoyang, along with Feng Qian and Duan Xiao Liang, was charged with involvement in illegal online lending practices through the Toko Tunai and Kascas applications under PT Vega Data Indonesia, which operated without OJK authorization while falsely claiming the opposite in their promotions. PT Vega Data Indonesia was established in late 2018, with Li Zhaoyang serving as the Director since May 2019, responsible for telemarketing and loan approvals, while Feng Qian managed human resources and finance, and Duan Xiao Liang coordinated collections.

Their applications spread misleading information and imposed high daily fees and interest rates that harmed consumers such as Bayu Prasetya and Mahdi Ibrahim. The prosecutor argued that Li's actions violated the Consumer Protection Law and the Criminal Code for marketing services that did not meet promises and for participating in the execution of such practices. In its verdict, the panel of judges confirmed that the elements of business actors, actions that did not meet promises, and joint involvement were proven legally.

Considering both mitigating and aggravating circumstances, the judge sentenced the defendant to 9 months and 15 days in prison, with time served deducted. Related evidence, including company documents, electronic devices, and transaction data, was ordered to be destroyed, and a case fee of IDR 5,000 was imposed on the defendant.

c. Decision No. 689/Pdt.G/2021/PN.Jkt.Pst

Case Number 689/Pdt.G/2021/PN.Jkt.Pst was filed by a group of citizens, facilitated by the Jakarta Legal Aid Institute, to sue the President, Vice President, Speaker of the House of

Representatives, Minister of Communication and Information, and the Chairman of the Financial Services Authority for negligence in regulating and overseeing online lending. The lawsuit was triggered by hundreds of reports of violations, including aggressive debt collection, personal data breaches, and even suicide victims.

The defendants were accused of failing to fulfill their constitutional duties, leading to violations of citizens' rights. However, the Central Jakarta District Court ruled that it lacked jurisdiction to hear the case and accepted the defendants' objections.

Despite the court's ruling in Case Number 689/Pdt.G/2021/PN.Jkt.Pst, which declared it lacked jurisdiction and granted the defendants' objections, a key point in this case is the sociological facts that highlight the urgent need for stronger regulations and consumer protection in the fintech sector.

Similarly, the rulings in Case Numbers 524 and 525/Pid.Sus/2020/PN Jkt.Utr show that the Financial Services Authority Regulation has not been effective as a basis for prosecution or court decisions regarding illegal fintech actors. Although the Financial Services Authority Regulation governs fintech operations to ensure legal certainty and consumer protection, in practice, law enforcement relies more on the Consumer Protection Law and the Criminal Code. This reflects a normative gap that weakens the effectiveness of enforcement.

Consequently, it can be concluded that, in terms of law enforcement, the Financial Services Authority Regulation has not been effective as a basis for prosecution or court decisions, relying instead on the Consumer Protection Law and the Criminal Code. Therefore, there is a critical need for clearer and more robust regulations regarding fintech transactions to ensure legal certainty and optimal protection for consumers.

To address this issue, it is recommended that fintech regulation be elevated to a Government Regulation, which holds higher legal authority than the Financial Services Authority Regulation and can be directly referenced in criminal proceedings. A Government Regulation would also allow for more stringent administrative and criminal sanctions and strengthen the Financial Services Authority's authority in oversight and cross-sector coordination. The PT Vega Data Indonesia case highlights the weakness of the Financial Services Authority's oversight, which has allowed illegal fintech operations to continue with misleading claims.

3. Reconstruction of a Financial Technology-Based Financial Transaction Regulation Model to Protect Consumers

Fintech, in essence, is a systemic tool born from the interaction between technological innovation and the economic needs of society. It plays a strategic role as a transformational instrument in strengthening the state's capacity to achieve social welfare, as mandated by the constitution. In the digital era, fintech acts as a catalyst in expanding access to financial services more efficiently and inclusively.

However, the sociological reality indicates weaknesses in regulatory aspects. Although the Financial Services Authority Regulation (POJK) has provided governance and consumer protection provisions, it has not been effectively used as a basis for prosecution or court

decisions against illegal fintech actors. Law enforcement still relies on the Consumer Protection Law and the Criminal Code, reflecting a normative gap and the weak binding power of the POJK as a legal instrument.

Therefore, a strategic step is needed in the form of reconstructing the fintech regulatory model into a Government Regulation (PP).

In this regard, the forthcoming Government Regulation should include not only substantive norms but also operational definitions and limitations, as follows:

- 1) **Definition of Digital Payment Services:** This includes all forms of electronic payment transactions conducted via devices and information technology networks.
- 2) **Definition of Payment Service Providers:** It clarifies who constitutes a payment service provider, including banks, fintech companies, and other legal entities providing digital payment services.
- 3) **Definition of Users:** This defines who qualifies as a user of the services, including individuals, businesses, and institutions using digital payment services.
- 4) **Definition of Personal Data and Data Protection:** It explains the concept of personal data, the scope of protected data, and the obligations of providers in managing, storing, and using this data in accordance with personal data protection regulations.
- 5) **Scope of Technology and Technical Standards:** It regulates the scope of technology used, cybersecurity standards, customer authentication standards (Strong Customer Authentication), and the use of open APIs that providers must comply with.
- 6) **Definition of Third Party Providers (TPPs):** This explains the entities included in third-party service providers, such as Payment Initiation Service Providers (PISPs) and Account Information Service Providers (AISPs), along with their respective rights and responsibilities.
- 7) **Data Access Limitations and Provisions:** It regulates the mechanism and conditions under which third parties can access user account data with the user's consent, including restrictions on data use and confidentiality obligations.
- 8) **Scope of Supervision:** This sets the supervisory body in charge and outlines the scope of its oversight, including inter-agency coordination in the regulation of digital payment services.
- 9) **Consumer Protection Provisions:** This elaborates on the rights and obligations of users and service providers, including dispute resolution mechanisms and sanctions for violations of consumer protection regulations.
- 10) **Definition and Eligibility Criteria for Financial Digital Innovation:** It explains the concept of innovation in digital payment services and establishes the eligibility criteria for products or services allowed to operate in the national payment system.

In addition to operational limitations, the upcoming Government Regulation should also include substantive provisions, including:

- a) **Transparency Norms:** Ensuring that all digital payment service providers must provide clear, accurate, and easily understandable information to users regarding products, fees, risks, and the rights and obligations of the parties involved.
- b) **Consumer Protection Norms:** Establishing a mechanism to protect consumer rights, on par with conventional transactions, including dispute resolution, personal data protection, and service provider accountability for damages incurred.
- c) **Data Security and Privacy Norms:** Requiring the implementation of cybersecurity standards and personal data protection in accordance with relevant laws, as well as the obligation to report security incidents to the competent authorities.
- d) **Technical and Operational Standards:** Establishing the obligation for providers to use strong customer authentication standards (Strong Customer Authentication), provide open banking APIs (Open Banking API), and ensure interoperability between payment systems.
- e) **Supervision and Compliance Norms:** Regulating the role and authority of supervisory bodies, reporting mechanisms, compliance audits, and administrative or criminal sanctions for violations of the Government Regulation.
- f) **Inclusivity and Accessibility Norms:** Encouraging the expansion of digital payment services to all levels of society, including underserved and economically vulnerable populations, to promote national financial inclusion.
- g) **Fairness and Healthy Competition Norms:** Preventing monopolistic practices and discrimination, while fostering healthy competition among financial service providers, both banks and fintech companies, to support innovation and offer diverse choices for consumers.
- h) **Inter-Institutional Cooperation Norms:** Regulating coordination and synergy among relevant state institutions, such as the Financial Services Authority, Bank Indonesia, and the Ministry of Communication and Informatics, for the supervision and development of digital payment services.

The proposed Government Regulation for digital payment services in fintech aligns with legal theories underpinning fair, transparent regulation focused on consumer protection. According to the welfare state theory, the state is responsible for creating welfare through regulations that protect consumers and ensure inclusive financial service access.

The legal certainty theory emphasizes the importance of clear and predictable rules to ensure safety for consumers and providers, with regulations that minimize legal risks. The consumer protection law theory highlights the need for additional safeguards for consumers, particularly regarding personal data and dispute resolution mechanisms.

Finally, the development law theory supports fintech innovation with regulations that ensure technology evolves safely and in compliance with standards.

CONCLUSION

The essence of Fintech functions as a social and legal instrument to support public welfare, particularly in enhancing access to financial services. The regulation of financial technology based financial transactions to realize legal protection for consumers in Indonesia is currently urgent, as law enforcement still relies on the Consumer Protection Law and the Criminal Code, rather than the Financial Services Authority Regulation.

This indicates the need for clearer and more decisive regulations regarding fintech transactions to ensure legal certainty and optimal consumer protection.

Furthermore, from the aspect of reconstructing the model for regulating financial technology-based transactions that can protect consumers, this can be achieved through regulations in government regulations that should include clear definitions, transparency, consumer protection, data security, technical standards, supervision, compliance, inclusivity, as well as dispute resolution mechanisms and stringent sanctions for violations.

Footnote

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