Al-Muamalat
Journal of Islamic Economics Law

P-ISSN 2621-5403
https://muamalat.journal.unida.gontor.ac.id/index.php/muamalat
Vol. 9, No. 1 December (2026).
DOI: 10.21111/muamalat.v9i1.18
Pages: 62-71

Legal Certainty and Consumer Protection in Sharia Fintech Lending: A Maqashid Sharia and Normative Analysis of POJK No. 18/2023

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Keywords:
Legal Certainty; Consumer Protection; Sharia Fintech Lending; POJK; Digital Contract

Abstract:
The development of Sharia fintech lending in Indonesia offers inclusive financing solutions, but it also raises new issues regarding cybersecurity and legal certainty. The objective of this study is to examine the legal framework based on Sharia principles for regulating IT-based financing services. Additionally, this study investigates the legal protections afforded to consumers in this context. The research findings indicate that POJK No. 18/POJK.03/2023 and DSN-MUI Fatwa No. 117/2018 are the main pillars ensuring the validity of digital Sharia fintech lending transactions. This study employs a normative legal method using a legislative and conceptual approach. Strict oversight by the OJK and the Sharia Supervisory Board (DPS) is crucial to protect consumers from practices involving riba, gharar, and maysir. Although cost transparency and risk mitigation through financing insurance have been regulated, a real-world challenge is how effectively Law No. 27 on Personal Data Protection (PDP Law) will be implemented. This study finds that to make the Islamic non-bank financial industry safe and competitive, stricter technical regulations, firm administrative sanctions, and increased public awareness of digital law are required.

Kata Kunci:
Kepastian Hukum; Perlindungan Konsumen; Fintech Lending Syariah; POJK; Akad Digital

Abstrak:
Perkembangan Fintech Lending Syariah di Indonesia membawa solusi pendanaan yang inklusif, tetapi juga menimbulkan masalah baru terkait keamanan siber dan kepastian hukum. Tujuan dari penelitian ini adalah untuk mempelajari kerangka hukum yang didasarkan pada prinsip syariah untuk mengatur layanan pendanaan berbasis TI. Selain itu, penelitian ini juga menyelidiki perlindungan hukum yang diberikan kepada konsumen dalam lingkungan ini. Hasil penelitian menunjukkan bahwa POJK Nomor 18/POJK.03/2023 dan Fatwa DSN-MUI Nomor 117/2018 adalah pilar utama yang menjamin keabsahan transaksi digital fintech lending syariah. Penelitian ini menggunakan metode yuridis normatif yang menggunakan pendekatan perundang-undangan dan konseptual. Pengawasan ketat dari OJK dan Dewan Pengawas Syariah (DPS) sangat penting untuk melindungi konsumen dari praktik riba, gharar, dan maysir. Meskipun transparansi biaya dan mitigasi risiko melalui asuransi pembiayaan telah diatur, masalah nyata di lapangan adalah seberapa efektif UU No. 27 tentang Perlindungan Data Pribadi (UU PDP) akan diterapkan. Studi ini menemukan bahwa untuk membuat industri keuangan non bank syariah aman dan kompetitif, diperlukan regulasi teknis yang lebih ketat, sanksi administratif yang tegas, dan peningkatan pengetahuan masyarakat tentang hukumdigital

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Introduction

Financial Technology (fintech) has structurally transformed financial services by enhancing efficiency and expanding financial inclusion across corporate and consumer sectors. In Indonesia, non-bank financial institutions leveraging Peer-to-Peer (P2P) lending models have emerged as critical alternatives to traditional banking, particularly for small and medium-sized enterprises seeking flexible funding options (Febrianti & Lubis, 2024, p. 2).

To sustain public trust, the state must offer rigid legal certainty. Initially, fintech activities were governed under the conventional lens of POJK No. 77/POJK.01/2016 (later amended to POJK No. 10/POJK.05/2022). However, recognizing the distinct theological and financial operational requirements of Islamic commercial law, the Financial Services Authority enacted POJK Number 18/POJK.03/2023 concerning Information Technology-Based Financing Services Based on Sharia Principles as the absolute parent regulation for sharia compliance. Electronic transactions are further bounded by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law) (Sihombing, 2023, p. 2).

Furthermore, because digital sharia contracts rely heavily on digital consent and automated data transmission, the integration of Law No. 27 of 2022 on Personal Data Protection (PDP Law) is dynamic and vital. Despite this robust statutory framework, severe challenges remain in ensuring that digital interfaces fulfill classical sharia contract requirements (shighat al-aqd) without compromising consumer privacy, resulting in structural legal gaps and enforcement uncertainties.

Fintech lending is a type of money lending that uses digital platforms and information technology to connect borrowers with lenders without using traditional intermediaries from financial institutions such as banks. Peer to Peer (P2P) lending is one of the most common types of fintech lending. It allows individuals or legal entities to provide loans directly to borrowers, who usually need funds with more flexible terms and a faster process compared to bank loans (Yuwono & Hoesein, 2025, p. 7).

Fintech aims to make financial products more accessible, make transactions easier and more efficient, and increase financial inclusion. As a result, regulation and supervision must be the main focus of regulators as a counterbalance to the proliferation of fintech practices due to the increasing development of fintech. The current regulation of fintech is a global requirement for the financial industry (Sulandjari & Juwita, 2023, p. 3).

The Financial Services Authority manages fintech lending and subsequently issued regulations to regulate fintech lending operations in Indonesia. Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services was the first regulation issued by the the

Financial Services Authority focusing on conventional fintech lending and was later amended to Financial Services Authority Regulation Number 10/POJK.05/20 in 2022 (Fitriani, 2024, p. 2)

In addition to Financial Services Authority regulations, sharia fintech lending is also regulated by Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions, Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, and MUI DSN Fatwa Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles. Sharia fintech lending businesses operate in Indonesia through several lengthy stages, starting from licensing registration until the license application is accepted (Fitriani, 2024, p. 26).

Various fintech services rely on electronic agreements. The parties can reach an agreement through digital media without having to meet in person. However, validity, legality, and evidence are new issues in civil law and consumer protection law due to this type of agreement model. Based on these background issues, this study addresses two central research questions: How does POJK No. 18/2023 in conjunction with Law No. 1 of 2024 guarantee legal certainty for digital contracts in sharia fintech lending transactions? What are the normative challenges and legal protections available for consumers regarding data privacy and sharia compliance under the current PDP Law framework?

The sustainability and public trust in fintech services are highly dependent on legal certainty. Both businesses and consumers will face difficulties in resolving disputes if there is no adequate legal certainty. Although there are regulations such as Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and its amendments, as well as laws made by the Financial Services Authority (OJK), the implementation and supervision of electronic agreements in fintech still face many challenges (Situngkir & Napitupulu, 2025, p. 5).

It is difficult for the public to understand the legal aspects of digital agreements. Many fintech service users are unaware that they are involved in legal relationships that have real consequences. This ignorance often leads to losses, especially in cases of illegal online lending or unethical collection practices. Conversely, fintech players must also create electronic agreements that comply with contract law and consumer protection (Situngkir & Napitupulu, 2025, p. 6).

Methodology

This study employs a qualitative, normative-legal research methodology utilizing secondary legal sources and library research. The analysis is strictly "Normative-Critical," evaluating the internal synchronization, legislative gaps, and operational adequacy of OJK regulations, the amended ITE Law, and the PDP Law without field data constraints, ensuring suitability for mapping sharia compliance structures (Agus Subagyo, S.ip. et al., 2023, p. 64).

Results and Discussion

1. Legal Certainty in Digital Contracts

The word “certainty” comes from the word “certain,” which means "definite, fixed, inevitable, a sure thing." The existence of modern law opens the door to problems that did not exist before, namely legal certainty. Traditional justice and benefits existed long before the modern legal era.

The principle of legal certainty is the belief that the law must be enforced properly and appropriately because the most important goal is certainty. Without certainty, the identity and meaning of the law will be lost and the law will no longer be used as a guide for behavior by everyone. Because a country has stable laws, the government creates legislation to regulate the law. This legislation is a stable legal system that is not based on direct decisions. The principle of legal certainty is the idea that the law must be applied correctly so that it does not harm anyone. The law must protect and defend society from various acts of crime or abuse against individuals or groups, and must be used as a guideline for everyone (Nugroho, 2023, p. 41).

Legal certainty requires that laws are clear, consistent, and operational. In digital transactions, contract validity relies on Article 11 of Law No. 1 of 2024 (Amended ITE Law), which establishes the legal force and non-repudiation parameters of electronic signatures. To satisfy the sharia requirement of a clear, mutually binding declaration of offer and acceptance (ijab and qabul), electronic signatures must be backed by certified electronic identity systems recognized by the Ministry of Communication and Informatics.

Dissecting POJK No. 18/2023, this regulation provides specific structural requirements for sharia-compliant digital contracts, superseding the conventional formulas found in older regulations. However, an internal conflict arises: while POJK No. 18/2023 demands absolute execution of sharia principles, it lacks granular technical mechanisms to audatably isolate digital funds from riba (usury) or gharar (uncertainty) in real-time automated escrow systems. This systemic weakness means that while the legal status of the contract is recognized, its operational sharia enforcement is dangerously broad and non-operational.

In addition to not contradicting the law, laws must be drafted in a form that is easy for the general public to understand and comprehend. Thus, a basic understanding of legal certainty and justice applies and is not lost, so as not to undermine the existing integrity system, as well as the system related to regulations and their implementation. Legal certainty is intended to encourage people to always consider the laws of the State (Nugroho, 2023, p. 42).

Legal certainty in digital contracts is provided by Law No. 11 of 2008 concerning

Electronic Information and Transactions. If there is a strong legal basis, fintech service providers must ensure that every electronic agreement they offer meets legal requirements. Users can take legal action if these legal principles are not complied with. To ensure business continuity and user trust, electronic agreements in fintech systems are regulated and recognized by national law.

Electronic signatures are very important for fintech services because they guarantee authentication, integrity, and non-repudiation (cannot be denied) in every electronic transaction. As long as they meet certain requirements, electronic signatures have legal force and legal consequences that are valid, in accordance with Article 11 of the ITE Law. This provides a solid legal basis for the use of electronic signatures in fintech agreements. To ensure that electronic signatures truly originate from the intended party and have not been altered, regulations require three conditions for the validity of electronic signatures: clear identity, verifiable data, and assurance that the data has not changed since it was signed (Situngkir & Napitupulu, 2025, p. 9).

Electronic signatures can take the form of OTP code input, biometrics, or digital signatures generated through electronic certificate technology. During the authentication process, all of these types are recognized by registered electronic certification providers operating under the auspices of the Ministry of Communication and Information Technology. In the fintech industry, electronic signatures also support the principle of efficiency. Agreement approval becomes faster, more efficient, and safer. This is very important for fast and massive technology-based transactions. However, the use of electronic signatures must also be accompanied by adequate cybersecurity mechanisms. The risks of digital identity theft, hacking of personal data, and account misuse remain challenges that must be anticipated by fintech providers (Situngkir & Napitupulu, 2025, p. 10).

2. Risk Mitigation and Supervision Mechanisms

The regulatory posture of the OJK remains highly reactive. Under POJK No. 18/2023, operators must implement risk mitigation via escrow and virtual accounts to prevent asset mixing. Yet, by applying uniform supervisory mechanisms derived from conventional P2P models to sharia entities, the OJK creates systemic vulnerabilities.

Regulatory Variable	Legal Basis	Normative Gap / Practical Challenge
Contrat Validity	Art. 11 Law No. 1/2024 & POJK 18/2023	High reliance on digital consent; lack of public literacy on digital legal consequences.
Sharia Auditing	POJK No. 18/2023 & Fatwa DSN-MUI	Absence of uniform sharia audit standards; passive/unclear role of the Sharia

	117/2018	Supervisory Board (DPS).
Data Privacy	Law No. 27 of 2022 (PDP Law)	Unauthorized access to user contacts and galleries continues due to weak administrative sanctions.

Cooperation between the OJK and the DSN-MUI lacks a unified, real-time tracking mechanism. The role of the Sharia Supervisory Board (DPS) within fintech firms remains largely advisory rather than supervisory, worsened by a distinct lack of strict administrative penalties for platforms that violate sharia boundaries.

The Financial Services Authority (OJK) is responsible for supervising and resolving disputes in the sharia fintech sector. OJK is an institution tasked with regulating and supervising the financial services industry. This institution is responsible for ensuring that sharia fintech service providers comply with applicable regulations and sharia principles. In addition, the OJK provides consumers with a means to file complaints and resolve disputes arising from the use of sharia fintech services. The OJK must ensure that all service providers comply with existing regulations and provide adequate protection for customers. Furthermore, the OJK must enhance consumer education regarding their rights and dispute resolution mechanisms, so that consumers can protect their own rights. Therefore, the role of the OJK is crucial in creating a safe and transparent Islamic fintech industry (S & Baidhow, 2025, p. 5).

In POJK No. 77/2016 concerning money lending services based on information technology, Article 21 states that operators and users must mitigate risks, which means that when conducting transactions on sharia fintech lending, both operators and users must be aware of the risks they will face when using digital applications and products. Article 22 states that every financial service provider has the right to become a member of the OJK financial information system (such as SLIK) or other systems recognized by the OJK, provided that they meet the requirements specified by law and official regulations. The aim is to maintain order, transparency, and supervision in the financial sector. Article 23 explains that fintech lending providers do not work alone, but can partner with various supporting technology service providers. The exchange of data is aimed at improving the quality, security, and reliability of information technology-based lending and borrowing services. Article 24 explains that the purpose is to ensure the security of funds for both lenders and borrowers, increase transparency in fund flow management, and reduce the risk of fraud or fund mixing by operators. In other words, the escrow and virtual account systems are important foundations for fintech lending services to operate in accordance with OJK regulations and protect the interests of all parties (Keuangan, 2022).

In the regulatory process, the OJK appears to be more responsive than anticipatory, with a greater focus on technology as a whole and less consideration of the unique principles of Sharia in consumer protection. Meanwhile, in the process of implementing OJK supervision of Sharia compliance, significant obstacles remain. Without separating sharia fintech from conventional fintech, the same supervisory model applied to both causes systemic weaknesses. There is no supervisory system that combines compliance with fintech regulations and sharia principles, so cooperation between the OJK and DSN-MUI has not been running well. Furthermore, supervisory performance is worsened by the absence of clear standards for sharia audits in the fintech industry, the unclear role of the Sharia Supervisory Board, and the lack of firm action against violations of sharia principles (S & Baidhow, 2025, p. 6).

3. Consumer Protection and Personal Data

Consumer protection is normatively anchored in Law Number 8 of 1999. Within digital financing, this protection must intersect with Law No. 27 of 2022 on Personal Data Protection (PDP Law). Reviewing the current legal reality, the common assertion that Indonesia lacks data privacy rules is false; the PDP Law is fully effective after its two-year transitional period. (Oktavia, 2023, p. 26).

The authentic legal problem is not the lack of rules, but the enforcement and technical compliance gaps. Under Article X of the PDP Law, processors must secure explicit, specific consent before accessing consumer data. In practice, many sharia fintech applications embed catch-all consent clauses within lengthy privacy terms, enabling illegal harvesting of user contacts, geolocation, and galleries. This bypasses the constitutional right to privacy and violates the core tenets of Maqashid Sharia (specifically Hifz al-Mal / protection of wealth and Hifz al-Nafs / protection of human dignity). Thus, the current regulatory framework is protective on paper but critically un-enforced against predatory actors (Hafidzah, 2024, p. 10).

In the fintech consumer protection industry, personal data is any information that can be linked to a person, either directly or indirectly. According to the Personal Data Protection Law No. 27 of 2022,19 personal data is divided into two types: general personal data (such as name, address, telephone number, etc.) and specific personal data (such as biometric data, financial data, etc.). Access to contacts, gallery, location, and user identity is often done in online lending practices without clear consent, which potentially violates the constitutional right to privacy (Kurnianto et al., 2025, p. 8).

Strict regulations such as the Financial Services Authority (OJK) and the Indonesian Ulema Council (MUI) fatwa are implemented in Indonesia to protect consumers in application-based sharia fintech services. OJK regulations govern information technology-based money lending and borrowing services, with a focus on protecting consumers from harmful practices, such as in addition, the DSN MUI fatwa sets sharia principles standards that must be followed by service providers to ensure that transactions are free from usury and gharar (S & Baidhow, 2025, p. 4).

It is very important to establish clearer and more specific rules regarding consumer rights to improve consumer protection in fintech lending. Currently, there are several laws that regulate illegal fintech lending, but they are not sufficient to protect customers of illegal fintech lending. Therefore, comprehensive regulations must be created to protect consumer rights, including accessibility to information about interest rates, fees, and loan terms and conditions. This is important to ensure that customers receive complete and clear information before making financial decisions that could affect their future (Yuwono & Hoesein, 2025, p. 9).

Conclusion

POJK No. 18/2023 combined with Law No. 1 of 2024 provides a definitive legal foundation recognizing the validity and non-repudiation of digital sharia contracts (akad) in Indonesia. However, the framework remains highly descriptive and suffers from operational gaps regarding automated sharia-compliant digital contract executions.

While consumer data privacy is formally codified under Law No. 27 of 2022 (PDP Law), severe implementation challenges persist. Predatory data harvesting occurs due to weak technical oversight and a lack of strict administrative sanctions by the OJK and the DPS.

To resolve these legal uncertainties, regulators must shift to a "Normative-Critical" stance by establishing clear, standardized sharia digital audit guidelines, enforcing explicit granular consent workflows, and imposing decisive penalties for both sharia non-compliance and data privacy violations.

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